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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215896
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Attachments	Applicant's Response to Opposer's Motion to Compel 4-24-15.pdf(290125 bytes) Declaration of Ian D. Gates in Support of Applicant's Response to Opposer's Motion to Compel 4-24-15.pdf(56872 bytes) Exhibit A1.pdf(411825 bytes) Exhibit A2.pdf(137082 bytes) Exhibit A3.pdf(49088 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BELL'S BREWERY, INC.,)	
)	Opposition No. 91215896
Opposer,)	
)	Application Serial No. 85/929,587
v.)	
)	
INNOVATION BREWING,)	
Applicant.)	
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Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO COMPEL

This is Applicant's Response to "Opposer's Motion to Compel," which was filed on April 9, 2015. In support of Applicant's response, Applicant concurrently files herewith a Declaration of Ian D. Gates ("Gates Decl."), together with exhibits thereto.

I. Introduction.

Opposer's Motion to Compel includes two components: (1) a request for an order compelling Applicant to provide a knowledgeable witness under Fed. R. Civ. P. 30(b)(6), and (2) a request for an order compelling Applicant to answer Opposer's Interrogatory Nos. 36 and 38 in full. Herein, Applicant refers to "Opposer's First Request" and "Opposer's Second Request" and addresses each separately, below, in Sections III and IV, respectively.

As established below, Applicant provided a 30(b)(6) witness that was knowledgeable with information reasonably available to Applicant in view of the extremely broad topics set forth in the 30(b)(6) deposition notice, making Opposer's First Request without merit. Also, Applicant has sufficiently answered and supplemented the two interrogatories that are the subject of Opposer's Second Request, making this request without merit, as well.

Opposer's Motion to Compel, following Opposer's Motion for Leave to File Amended Notice of Opposition, is a further example of Opposer's efforts to cause Applicant to spend significant legal fees to defend an opposition against an intent-to-use application for which there is only very minimal probative evidence. As with Opposer's Motion for Leave to File Amended Notice of Opposition, Opposer again supports its motion with transcript excerpts that mischaracterize the full extent of the recent 30(b)(6) deposition, selected to mislead the Board as to the full extent of testimony provided by Applicant during the deposition. Moreover, it is clear from the recent depositions, as well as document requests filed on the final day of discovery, that Opposer is using discovery in the present opposition to locate non-existent evidence presumably to build an unrelated business-tort case of some sort¹ against Applicant in view of recent negative social media coverage regarding this opposition, or to otherwise force Applicant into walking away from its legitimate trademark rights simply due to the financial pressures of defending this opposition. It also is evident from the recent depositions and recent discovery requests that Opposer presumably is seeking evidence that may support a claim that Applicant's

¹ At the conclusion of the 30(b)(6) deposition of Ms. Dexter, Opposer's counsel pursued a line of questions that suggests Opposer's belief that Applicant has intentionally sought to damage Opposer's business in connection with negative social media and other backlash against Opposer following recent press coverage of this opposition. [*See* Gates Decl. ¶ 4, Exhibit A2, p. 261, line 17–p. 263, line 14; *see also* Gates Decl. ¶ 8, Exhibit A3, p. 69, lines 12–15; *see also* Opposer's recently filed Reply Brief in Further Support of Opposer's Motion for Leave to File Amended Notice of Opposition (TTAB Paper No. 20), p. 2, lines 8–9.]

mark is not in legal use in commerce or is not in use in interstate commerce; however, the present application is a Section 1(b) application, and therefore such evidence is irrelevant.

In the interest of judicial economy and to avoid further prejudice to Applicant, Applicant respectfully requests that Opposer's Motion to Compel be denied in full for the reasons discussed herein.

In addition, should the Board grant Opposer's Motion to Compel with respect to production of a knowledgeable 30(b)(6) witness under Opposer's First Request, Applicant requests that Applicant not be ordered to travel from its home state of North Carolina to Opposer's location in Michigan, as advocated by Opposer in Opposer's Motion to Compel. Such an order finds no support in 37 CFR Chapter I, Part 2, including 37 CFR § 2.127(f), and Opposer's citation to support this request is to a patent dispute in district court, *Tulip Computers International B.V. v. Dell Computer Corp.*, 63 USPQ2d 1527, 1533 (D. Del. 2002), where the court has broader discretion than the Board to award monetary and other sanctions. Moreover, Opposer's lead counsel is in New York City and likewise would be required to travel regardless of the location of a subsequent deposition. This is yet another attempt by Opposer to waste the resources of Applicant to continue to defend its intent-to-use application.

II. Brief History of Relevant Facts.

Applicant does not disagree with the actual facts set forth in Opposer's Motion to Compel, but Applicant objects to the attorney arguments included under the "FACTS" subheading therein. Applicant presently submits herewith the Gates Decl. to fill in gaps in Opposer's presentation of facts, to provide highly relevant excerpts from the 30(b)(6) deposition

that Opposer failed to include with its Motion to Compel, and to correct a minor error² set forth in Opposer's Motion to Compel.

Applicant filed U.S. Trademark Application Serial No. 85/929,587 ("Applicant's Application") under Section 1(b) of Trademark Act, based on Applicant's bona fide intent to use the INNOVATION BREWING mark. [Gates Decl. ¶ 2, Exhibit A1.] Applicant's Application remains pending under Section 1(b). [*Id.*]

On March 19 and 20, 2015, Opposer deposed Nicole Dexter as Applicant's designated 30(b)(6) witness. On March 20, 2015, Opposer deposed Charles Owen under Fed. R. Civ. P. 30(b)(1). [Gates Decl. ¶ 3.]

On March 20, 2015, Opposer withdrew Opposer's Motion to Extend Discovery Period By Thirty (30) Days. [TTAB Paper No. 13.]

During the 30(b)(6) deposition, after diligent preparation in view of the topics set forth in the deposition notice [*see generally* Gates Decl. ¶ 4, Exhibit A2, p. 17, line 22–p. 22, line 5.] Ms. Dexter testified as to Applicant's knowledge of such topics. [*See generally id.* at Exhibit A2.]

During the 30(b)(6) deposition of Ms. Dexter, which spanned two days, counsel for Opposer questioned Ms. Dexter on such topics as her and Applicant's interactions with third parties, including industry colleagues and friends and family, regarding recent press and social media coverage of the present opposition. [*See* Gates Decl. ¶ 4, Exhibit A2, pp. 151–179 and 235.]

Also during the 30(b)(6) deposition of Ms. Dexter, counsel for Opposer questioned Ms. Dexter on such topics as federal, state, and local business licensing. [*See* Gates Decl. ¶ 4,

² On page 3 of Opposer's Motion to Compel, Opposer indicates that "[o]n March 31, Applicant advised that it would not be able to respond in full to Opposer's [March 27, 2015] letter at that time due to personal travel." However, Applicant's counsel was not traveling that week, but rather was out of the office to attend to a family matter. [Gates Decl. ¶ 6.]

Exhibit A2, pp. 80–87, 110–112, and 214–215; *see also* Gates Decl. ¶8, Exhibit A3, pp. 31–39 (similar line of questioning of 30(b)(1) witness, Charles Owen).]

On March 31, 2015, Applicant first received an electronic copy of the transcript corresponding to the first day of the 30(b)(6) deposition, and on April 1, 2015, Applicant first received an electronic copy of the transcript corresponding to the second day of the 30(b)(6) deposition. [Gates Decl. ¶ 5.] On April 15, 2015, Applicant’s counsel forwarded to the reporting company a signed verification of the transcript of the 30(b)(6) deposition, together with an errata sheet. [*Id.* at ¶ 9.] On April 16, 2015, Applicant designated select portions of the transcript pursuant to the protective order in place in this opposition. [*Id.* at ¶ 10.]³

III. Opposer’s First Request – Production of a Knowledgeable 30(b)(6) Witness.

A. Legal Standard.

Pursuant to Fed. R. Civ. P. 30(b)(6), a party “has an obligation not only to pick and produce persons that have knowledge of the subject matter identified in the notice but also to prepare those persons so that they can give complete, knowledgeable, and binding answers as to matters known or *reasonably available* to the organization.” TBMP § 404.06(b) (emphasis added). However, in a 30(b)(6) deposition notice, a party “must describe *with reasonable particularity* the matters for examination.” Fed. R. Civ. P. 30(b)(6) (emphasis added). *See also* TBMP § 404.06(b). Moreover, Fed. R. Civ. P. 26(b)(2)(C) limits the extent of discovery allowed under the rules, including when

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; ... [or]

³ Applicant provides this as background solely to highlight to the Board that Opposer’s Motion to Compel was filed prior to Applicant having fully reviewed and verified the deposition transcripts, for which Applicant is entitled thirty (30) days following receipt of the transcripts. Fed. R. Civ. P. 30(e)(1).

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the important of the issues at stake in the action, and the importance of the discovery in resolving the issues.

B. Opposer's First Request Should Be Denied Because Applicant's 30(b)(6) Witness Was Prepared to Testify and Did Testify with Respect to the Deposition Notice's Extremely Broad Topics.

As correctly set forth in Opposer's Motion to Compel, the 30(b)(6) Notice of Deposition included thirteen (13) topics, including the following six (6) topics at issue in Opposer's Motion to Compel:

- No. 1 – The origins, motives and/or reasons for Applicant's selection and adoption of Applicant's Mark;
- No. 4 – Applicant's efforts to protect and seek registration of Applicant's Mark;
- No. 5 – Applicant's advertising, marketing and/or promotion of the Products and Applicant's future plans to advertise, market and/or promote the Products;
- No. 6 – Applicant's future business plans and/or marketing plans (whether formal, information, written or not) to sell the Products;
- No. 11 – Applicant's non-privileged communications with third-parties regarding Opposer's Marks, Opposer, Applicant's defenses in the Opposition and/or Opposer's claims in this Opposition; and
- No. 12 – Applicant's collection of documents in response to Opposer's First Set of Requests for Production.

Before specifically addressing each of the above topics, Applicant notes that Ms. Dexter, as the designated 30(b)(6) witness, testified as to her being the most appropriate official of Applicant to testify on its behalf, including her knowledge with respect to the topics identified in the deposition notice, and testified as to her diligent preparation for the deposition. [See Gates Decl. ¶ 4, Exhibit A2, page 17, line 22–page 22, line 5.] For example, with respect to Ms. Dexter's preparation:

Q: Did you do anything to prepare for the deposition today?

A. Yes.

Q. What did you do?

A. I reviewed these deposition topics. We reviewed any documents we produced to you.

Q. Anything else?

...

A. Yes, I spoke with my attorneys. ...

Q. Did you talk with your partner about it?

A. Chip? Charles?

Q. Yes.

A. Yes. Yes.

...

Q. And what did you discuss with him?

A. We just went over everything I just said to you. We just did that together.

Q. Did you look at any documents with him?

A. Yes.

Q. Which ones?

A. The documents we submitted to you.

[Gates Decl. ¶ 4, Exhibit A2, p. 20, line 15–p. 22, line 23.]

1. Topic No. 1 – The origins, motives and/or reasons for Applicant’s selection and adoption of Applicant’s Mark.

According to Opposer, Opposer was “unable obtain certain testimony from Applicant about Applicant’s selection and adoption of Applicant’s Mark, Topic 1.” [Opposer’s Motion to Compel, p. 7, lines 7–9.] However, Opposer’s support for this assertion is based on testimony related to one of Applicant’s logos, and nuanced changes to design elements that were made to this logo, not to Applicant’s standard character mark INNOVATION BREWING. [See *id.* at p. 7, lines 9–11.] Opposer’s own notice of deposition expressly defines “Applicant’s Mark” as “the designation sought to be registered by Applicant in the United States Patent and Trademark Office, Serial No. 85,929,587 for the goods recited in the application.” [Opposer’s Motion to Compel, Declaration of Sarah M. Robertson (“Robertson Decl.”), ¶ 2, Exhibit A, Schedule A, ¶ 3.] That is, Applicant’s Mark is the standard character mark INNOVATION BREWING. Accordingly, in the notice of deposition, and specifically with respect to Topic No. 1, Applicant

simply was not tasked with being prepared to discuss nuanced design element changes associated with one of its logos, which have no relevance on the present opposition. For this reason, Ms. Dexter was not provided with notice to prepare for such a line of questioning, and should not have been expected to prepare for such a line of questioning. Accordingly, Applicant should not be forced to produce a new 30(b)(6) witness to address such irrelevant questions. Ms. Dexter already testified in depth as to “[t]he origins, motives, and/or reasons for Applicant’s selection and adoption of Applicant’s Mark.” For example:

Q. And what was the name that you picked?

A. Well, for a while we couldn't think of a name. We just kind of continued on building our equipment and building our keg washer and things like that, kind of trying to brainstorm.

And then the name came about while we were in our assembling walk-in cooler. We bought an old, used walk-in cooler from -- I think it was Craigslist in Virginia. We had to drive a little '83 diesel Datsun pickup to pick it up, with a trailer attached, and, you know, bring it back to Sylva.

And we were putting it back together, and we learned that people buy new walk-in coolers for a reason: Because old walk-in coolers don't like to get taken apart and put back together many times.

So we were constructing it, and we couldn't get -- we finally got all the sides up -- I mean, if we bought a new cooler and had a professional install it, it would have probably taken three hours. It took Chip and I days to get this walk-in cooler together.

So we put all the walls together, finally. We were trying to attach the ceiling panels. So it was the first panel, and we couldn't get the ceiling panel close enough to the side panel to actually lock into place.

So I had to climb up on top of the ceiling panel and be really careful not to, you know, put my weight too far over, because it would have, you know, collapsed and dumped me onto the concrete floor. And I was kind of trying to jam my body weight into the edge of the ceiling panel so it would come close enough so he could latch it into place.

And we finally got it latched, and it just felt like such a victory, and I leaned over and said, "What about Innovation Brewing? It seems like that has been what we had to do to make this work, is to get innovative, because we don't have the resources or the money to buy stuff new like most people do."

[Gates Decl. ¶ 4, Exhibit A2, p. 29, line 19–p. 31, line 13.]

For the above reasons, Opposer's First Request with respect to Topic No. 1 is without merit.

2. Topic No. 4 – Applicant's efforts to protect and seek registration of Applicant's Mark.

Next, Opposer objects to Applicant's testimony as to Topic No. 4. Specifically, Opposer cites to a single excerpt from the deposition transcript regarding ownership of Applicant's Mark as evidence that Ms. Dexter was not adequately prepared to testify on behalf of Applicant. [Opposer's Motion to Compel, p. 7, lines 11–15.] More specifically, Opposer cites to a portion of Ms. Dexter's testimony where Opposer was questioning Ms. Dexter's original indication in Applicant's Application that she was the owner of Applicant's Mark. [See Gates Decl. ¶ 4, Exhibit A2, p. 112, line 21–p. 113, line 18.] Applicant acknowledges that during this testimony, Ms. Dexter initially indicated that she did not know whether she personally or Applicant was the true owner of Applicant's Mark at the time Applicant's Application was filed. However, Opposer fails to note in Opposer's Motion to Compel that Ms. Dexter very clearly clarifies that "Innovation Brewing is the owner of the mark" subsequently in the deposition transcript. [*Id.* at Exhibit A2, p. 116, lines 7–8.] Accordingly, Opposer cannot point to a line of questioning regarding Topic No. 4, in which Ms. Dexter was not prepared, failed to answer, or otherwise evaded questioning. For these reasons, Opposer's First Request with respect to Topic No. 4 is without merit.

3. Topic No. 5 – Applicant's advertising, marketing and/or promotion of the Products and Applicant's future plans to advertise, market and/or promote the Products.

Next, Opposer objects to Applicant's testimony as to Topic No. 5. First, Opposer objects to Ms. Dexter not being prepared to discuss such topics as Applicant's publicly available Twitter feed and Applicant's domain name registrations. If Opposer had included with "reasonable

particularity” the subject of Applicant’s Twitter account and domain name registration, Ms. Dexter certainly could have prepared to answer such questions. However, Applicant cannot have guessed that such lines of questioning would have been pursued, given their irrelevance to whether or not there is a likelihood of confusion between Applicant’s Mark and Opposer’s registered INSPIRED BREWING mark and its purported BOTTLING INNOVATION SINCE 1985 advertising slogan, or the purported mere descriptive nature⁴ of Applicant’s Mark. Moreover, Applicant’s Twitter feed is publicly available, as is Applicant’s website. Ms. Dexter’s lack of knowledge as to such specific, irrelevant topics not properly noticed in the notice of deposition does not rise to the level of not being adequately prepared when presented with the extremely broad Topic No. 5. Yet, Ms. Dexter did, in fact, testify in detail as to Topic No. 5. For example:

Q. Okay. And does that -- does that insinuate -- let me phrase this a different way. Does -- does that mean that you're going to sell beer to a larger region?

A. Yes.

Q. Okay. And what do you define as your region?

A. Mostly the Southeast. Southeastern states: Georgia, South Carolina, Florida, North Carolina, Tennessee.

Q. What is your incentive to sell to states like that?

A. Well, we're geographically really close to a few other states, a lot closer than we are to a lot of North Carolina, so that's a big incentive.

Q. Have you already begun promoting your beer in any of those states?

A. Yes.

Q. Can you give me an example?

A. The South Carolina beer festival. We did a lot of promotion for our brand in South Carolina.

Q. Okay. When do you plan to begin selling outside of the state of North Carolina?

A. Hopefully soon. Maybe the next six months or so.

Q. What is the factor that would allow you to be able to do that?

A. We'd have to increase production a little bit.

⁴ Opposer, on March 20, 2015, filed Opposer’s Motion for Leave to File Amended Notice of Opposition, based on Applicant’s Mark purportedly being merely descriptive of beer. [TTAB Paper No. 15.]

[Gates Decl. ¶ 4, Exhibit A2, p. 254, line 3–page 255, line 8; *see also id.* at Exhibit A2, p. 255, line 15–p. 258, line 10, and p. 70, line 21–p. 71, line 25.]

With respect to Topic No. 5, Opposer also specifically objects to Ms. Dexter’s “[lack of] knowledge of the details regarding Applicant’s advertisement placed in the Western Carolina University’s Performing Arts Center guide.” [Opposer’s Motion to Compel, p. 9, lines 2–4.] Applicant acknowledges that Ms. Dexter testified she assumed that the free advertisement appeared in the Western Carolina University’s Performing Arts Center guide, but that she did not herself witness its presence in the guide. [See *id.* at Robertson Decl., Exhibit D, p. 77, line 20–p. 78, line 4.] Based on the overly broad Topic No. 5, Applicant cannot have anticipated such an irrelevant question that would lead Applicant to seek out documentary or other evidence from the Western Carolina Performing Arts Center as to whether a free advertisement placed by Applicant did in fact appear in the guide. These facts are so far removed from what Applicant could have reasonably been expected to review to prepare for testimony that Opposer should not now be able to compel a second deposition to testify as to such facts that have no bearing on likelihood of confusion between Applicant’s Mark and Opposer’s marks or as to the purported mere descriptive nature of Applicant’s Mark.

For the above reasons, Opposer’s First Request with respect to Topic No. 5 is without merit and further evidences Opposer’s dilatory and abusive tactics that have been repeatedly displayed during the present opposition.

4. Topic No. 6 – Applicant’s future business plans and/or marketing plans (whether formal, information, written or not) to sell the Products.

Next, Opposer objects to Applicant’s testimony as to Topic No. 6, and specifically as to “whether Applicant has federal label approval from the [Alcohol and Tobacco] Tax and Trade

Bureau, which would allow Applicant to distribute its products across state lines under Applicant's Mark, including at beer festivals in neighboring states." [Opposer's Motion to Compel, p. 7, lines 18–20.] As an initial matter, Applicant simply does not believe that Applicant's federal, state, or local licensing falls within Topic No. 6, and such subject matter certainly is not identified "with reasonable particularity" as required by Fed. R. Civ. P. 30(b)(6), if a 30(b)(6) deponent is to be prepared to answer questions as to such subject matter. Ms. Dexter could have been prepared to discuss such matters if Opposer had set them forth with reasonable particularity. Applicant cannot be expected to foresee every possible question, however remote from the matters at issue in the present opposition, and prepare accordingly, such as memorizing every single business document Applicant has in its files to be able to recall such irrelevant facts as the date on which a federal TTB license was obtained. [See *id.* at p. 7, line 17 (citing to such excerpts from the deposition transcript).] For these reasons, it is further evidenced that Opposer's First Request is without merit, and Applicant can only conclude that Opposer is intent on filing every available motion, including the present, to outspend Applicant in the present dispute and force Applicant into walking away from its trademark rights that are the subject of its opposed intent-to-use application simply due to the financial pressures of defending this opposition.

5. Topic No. 11 – Applicant's non-privileged communications with third-parties regarding Opposer's Marks, Opposer, Applicant's defenses in the Opposition and/or Opposer's claims in this Opposition.

Opposer asserts that "Ms. Dexter failed to prepare for and was therefore not knowledgeable about Topic No. 11, Applicant's non-privileged communications with third-parties regarding Opposer's Marks, Opposer, Applicant's defenses in the Opposition and/or Opposer's claims in this Opposition." [Opposer's Motion to Compel, p. 6, lines 17–20.] More specifically, Opposer asserts that "Ms. Dexter could not recall the name of a single friend or

acquaintance that she has spoken to about this Opposition.” [*Id.* at p. 6, line 21–p. 7, line 1.] However, this is an inaccurate statement, and misleads the Board. For example, Ms. Dexter testified in detail as to her interactions with industry colleagues regarding the present opposition. [See *e.g.*, Gates Decl. ¶ 4, Exhibit A2, pp. 151–179.] Applicant does not reproduce the entirety of this lengthy testimony here, but notes that Ms. Dexter testified in detail as to her communications with such individuals as Joe Rowland, Billy Pyatt, and John Lyda. In addition, Ms. Dexter testified in detail with respect to her communications with reporters during the recent interest by the press in the present opposition. [See *id.* at Exhibit A2, p. 128, line 8–p. 135, line 10]. Moreover, Ms. Dexter testified as to her communications with family members. [See *id.* at Exhibit A2, p. 235, lines 3–20.]

Despite the significant testimony outlined above that Opposer fails to mention to the Board, Opposer instead focuses on select excerpts without providing the proper context of the testimony quoted. Specifically, Opposer cites to select lines of testimony on pages 234–236 of the deposition transcript to support Opposer’s assertion that Ms. Dexter was not prepared with respect to Topic No. 11. However, the line of testimony cited by Opposer follows a direct question posed by Opposer’s counsel regarding Applicant’s response to Opposer’s Interrogatory No. 38, which stated in its entirety “Identify all opinions and/or other advice received by Applicant concerning the likelihood of confusion between Applicant’s Mark and Opposer’s Marks and/or the merits of Opposer’s claims against Applicant and/or this Opposition.” In other words, at the time the Interrogatory was asked and answered, and presumably at the time of the deposition, as well, Opposer expected Applicant and its principals to recall and identify every single individual—in addition to the five specific individuals identified when responding to Opposer’s First Set of Interrogatories [see Robertson Decl. ¶ 15, Exhibit M, Response Nos. 36

and 38] and in the deposition testimony, as noted above—with whom Applicant’s principals may have discussed the present opposition. An expectation that a diligent preparation for the 30(b)(6) deposition in view of Topic No. 11 would result in somehow refreshing Applicant’s principals’ recollection as to the identities of tens, and possibly hundreds, of individuals is simply preposterous, especially if Ms. Dexter did not take personal notes, such as identifying every single bar patron with whom she or her business partner discussed the present opposition, to be able to refresh her recollection.⁵

For the above reasons, Opposer’s First Request with respect to Topic No. 11 is without merit and amounts to nothing more than a fishing expedition for some non-existent evidence that Applicant can only conclude is sought to support an unrelated tort claim.

6. Topic No. 12 – Applicant’s collection of documents in response to Opposer’s First Set of Requests for Production.

Opposer objects to Ms. Dexter’s testimony as to Applicant’s collection of documents in response to Opposer’s First Set of Requests for Production. Applicant notes that Ms. Dexter’s deposition was on March 19–20, 2015. Applicant was served with Opposer’s First Set of Requests for Production on October 2, 2014, and Applicant diligently served responses thereto and produced documents on October 29, 2014, almost five months prior to Ms. Dexter’s deposition. [Gates Decl. ¶ 7.] Ms. Dexter testified that in preparation for her testimony, she and her business partner, Charles Owen, reviewed the documents produced. [*Id.* at Exhibit A2, p. 20, line 15–p. 22, line 3.] Moreover, Ms. Dexter testified that in collecting documents responsive to Opposer’s First Set of Requests for Production, she “looked through any file [she] thought would have information on what [she] was searching for,” and in fact that “[she] believed [she] searched through all of [Applicant’s files].” [*Id.* at Exhibit A2, p. 222, line 19–p. 223, line 2.]

⁵ See *infra* Section IV regarding the possibly hundreds of individuals with whom Applicant’s principals may have discussed the present dispute.

Opposer takes exception to the fact that Ms. Dexter could not identify the specific titles of Applicant's paper and electronic file folders, such as "accounting" and "wholesale invoices," and the like. [See Opposer's Motion to Compel, p. 6, lines 8–12 and corresponding cited excerpts of the deposition transcript.] If, in the notice of deposition, Ms. Dexter had been tasked with memorizing the specific titles of Applicant's paper and electronic file folders, then perhaps Ms. Dexter could have been prepared for such lines of questioning, or at a minimum could have brought notes with her to the deposition to refresh her recollection as to such irrelevant subject matter. However, Applicant must again emphasize that the sole issue in the opposition at the time of the deposition was whether likelihood of confusion exists with Opposer's INSPIRED BREWING mark and its purported BOTTLING INNOVATION SINCE 1985 advertising slogan. It follows then that based on Opposer's Topic No. 12, Applicant could not have reasonably anticipated being asked about the specific titles of Applicant's paper and electronic file folders. Moreover, such titles are not even relevant to the present opposition of Applicant's intent-to-use application.

Opposer then accuses Ms. Dexter of being evasive in her answers to questions regarding specific key words that she searched when locating documents responsive to Opposer's First Set of Requests for Production. [Opposer's Motion to Compel, p. 6, lines 13–16.] Presumably, it is Opposer's position that Ms. Dexter, in preparing for her deposition with respect to Topic No. 12, should have reviewed any documents in existence that would refresh her recollection as to which specific key words were used in searching electronic files. However, this presupposes that such a document exists to refresh Ms. Dexter's recollection. Ms. Dexter's deposition took place almost five months after Applicant's initial diligent search for responsive documents, and therefore if no document exists to refresh her recollection as to her specific actions, she could only rely on

personal memory and discussions with her business partner, Charles Owen, which she testified took place. Applicant is unaware of any requirement that such notes be created during document production, particularly in view of the small nature of Applicant's business relating to the intent-to-use mark, the minimal files to search in the first place, and the very limited number of possible key words that would have been used to search electronic files. Despite this, Ms. Dexter testified that she searched through all of Applicant's files when attempting to locate responsive documents. There is nothing more that Opposer could possibly need with respect to this deposition topic, particularly in view of the very limited issues in the present opposition. Applicant can only conclude that this is yet another attempt to force Applicant to respond to a motion and expend significant legal fees defending an intent-to-use application. For these reasons, Opposer's First Request with respect to Topic No. 12 is without merit.

C. Opposer's First Request Should Be Denied Because the Discovery Sought is Irrelevant and/or Cumulative or Duplicative of Evidence Already Produced and/or Can Be Obtained from Some Other Source that is More Convenient, Less Burdensome, or Less Expensive.

As previously set forth, Applicant's Application is an intent-to-use application. Opposer's original basis for opposition is likelihood of confusion between Applicant's INNOVATION BREWING mark and Opposer's INSPIRED BREWING mark and its purported BOTTLING INNOVATION SINCE 1985 advertising slogan. Opposer's Motion for Leave to File Amended Notice of Opposition filed on March 20, 2015 seeks to add a new basis based on Applicant's Mark being merely descriptive. Opposer is now arguing that Applicant should be ordered by the Board to produce another 30(b)(6) witness knowledgeable as to such matters as Applicant's nuanced changes to the design elements of Applicant's logos, Applicant's rarely used Twitter account with a publicly available Twitter stream, Applicant's placement of a single advertisement in a local performing arts center guide, Applicant's federal and state licensing, and

every single communication (not just written correspondence) that Applicant’s principals have had with individuals regarding this opposition—none of which is remotely relevant to a likelihood of confusion or the mere descriptiveness of Applicant’s Mark. Instead, Opposer is simply doing everything it can to force Applicant to continue spending legal fees to defend its intent-to-use application.

Moreover, a significant portion of the allegedly deficient testimonial evidence is available publicly or via document production, including document production already provided to Opposer. For example, further to Topic No. 4, discussed above (“Applicant’s efforts to protect and seek registration of Applicant’s Mark”), the entirety of the prosecution history of Applicant’s Application is publicly available via the Office’s Trademark Status and Document Retrieval (TSDR) system. Also, Applicant has produced documents related to Applicant’s various business licenses, including federal and state alcohol related licenses in response to document requests served on the last day of discovery. This production renders Opposer’s objections to Ms. Dexter’s testimony on this subject moot.

With respect to Topic No. 5 (“Applicant’s advertising, marketing and/or promotion of the Products and Applicant’s future plans to advertise, market and/or promote the Products”), Applicant has produced more than one business plan, various advertising and marketing materials, and answered Interrogatories regarding this topic. Moreover, regarding Opposer’s objection to Ms. Dexter’s lack of knowledge with respect to Applicant’s Twitter accounts and domain name registrations, Ms. Dexter’s sole business partner, Charles Owen, was deposed directly following Ms. Dexter on March 20, 2015, and Mr. Owen provided testimony as to these subjects. [See Gates Decl. ¶ 8, Exhibit A3, p. 23, line 18–p. 26, line 23.] In addition, regarding Opposer’s objection to Ms. Dexter’s lack of knowledge with respect to nuanced changes to the

design elements of one of Applicant's logos, Mr. Owen also provided testimony as to this subject and as to another one of Applicant's logos (not even including the INNOVATION BREWING mark) that has no relevancy in the present opposition. [*See id.* at Exhibit A3, p. 26, line 24–p. 31, line 16.]

Regarding Topic No. 6, again Applicant has already produced two business plans and answered Interrogatories as to this topic, not to mention the detailed testimony provided by Ms. Dexter, discussed in detail above.

Regarding Topic No. 11, Applicant has already identified via Interrogatory responses the individuals with whom Applicant's principals have discussed this opposition, and with Ms. Dexter providing detailed testimony as to these communications, as set forth above. Applicant acknowledges that in addition to specific individuals identified, Applicant—in an effort to be fully forthcoming—identified “miscellaneous friends, family, and acquaintances.” Applicant addresses this issue in greater detail below in Section IV, but briefly expresses Applicant's belief that the identity of miscellaneous friends, family, and acquaintances beyond the several specific individuals already identified with whom Applicant's principals have possibly discussed this opposition is so far from being relevant to the very limited issues of likelihood of confusion and potentially mere descriptiveness present in this opposition, Applicant can only conclude that Opposer is looking to harass Applicant's acquaintances, such as via subpoenas. [*See e.g.*, Gates Decl. ¶ 4, Exhibit A2, p. 151, line 23–p. 162, line 5 (including detailed testimony regarding Ms. Dexter's communications with Joe Rowland, and with Opposer's counsel asking at p. 154, lines 7–9 “Do we need to get a subpoena out on him to find out that information, or is there some other way we can get it?”)] Moreover, if Ms. Dexter cannot recall with whom she has discussed

this opposition, in addition to the individuals already expressly identified, then she simply cannot recall. A subsequent deposition under 30(b)(6) will not aid in her recollection.

Regarding Topic No. 12, Applicant has produced documents responsive to Opposer's document requests, and testimony as to the specific titles of Applicant's electronic and paper file folders, as well as specific key words used in electronic document searching, will not result in any new responsive documents. Moreover, if Ms. Dexter and Mr. Owen cannot recall the specific key words used to search electronic documents several months ago, and if there is no document, such as handwritten notes, to refresh their recollection, then a second deposition will not result in any new evidence on this topic.

For at least the above reasons, requiring a subsequent deposition under 30(b)(6) to address these topics is duplicative and cumulative, at best, of other discovery already taken. If Opposer now, in hindsight, wishes it had worded its notice of deposition topics with more particularity, asked additional Interrogatories, or requested additional document production, Opposer should not have withdrawn Opposer's Motion to Extend Discovery Period By Thirty (30) Days, and Applicant should not now be burdened to attend another deposition or respond to a motion to reopen discovery due to Opposer's failure to conduct discovery with which it would ultimately be satisfied during the discovery period. Therefore, pursuant to Fed. R. Civ. P. 26(b)(2)(C)(i), Opposer's Motion to Compel should be denied.

D. Opposer's First Request Should Be Denied Because the Burden and Expense of the Discovery Sought Outweighs Any Benefit Considering Applicant's Resources and the Issues Present in this Opposition.

Applicant is a small start-up brewery in Sylva, North Carolina. Applicant brewed approximately 500 barrels of beer in 2014, in contrast to Opposer's approximately 300,000 barrels brewed during that time. The burden for Applicant to continue defending against

Opposer's dilatory litigation practices in the present opposition, including legal fees associated with a second deposition, not to mention time away from Applicant's business, far exceeds any benefit of the irrelevant evidence being sought by Opposer.

Applicant's Application is pending under Section 1(b) of the Trademark Act as an intent-to-use application. The sole issue present in the original Notice of Opposition is likelihood of confusion between Applicant's INNOVATION BREWING mark and Opposer's INSPIRED BREWING mark and its purported BOTTLING INNOVATION SINCE 1985 advertising slogan. If the Board grants Opposer's Motion for Leave to File Amended Notice of Opposition, then the issue of mere descriptiveness also will be present in the opposition. Such evidence as changes to design elements of Applicant's logos, domain name registrations, whether a free advertisement appeared in a local performing arts center's guide, federal and state business licensing, and communications with miscellaneous acquaintances simply have no bearing on the limited issues present, or possibly present, in this opposition. That is, a second deposition under 30(b)(6) simply will not produce any additional evidence not already obtained by Opposer or that is remotely relevant to the present opposition.

For at least the above reasons, requiring a subsequent deposition under 30(b)(6) to address these topics would result in a burden and expense that far outweighs any likely benefit to Opposer in having a second opportunity to present more detailed deposition topics and harass Applicant via a second deposition. Therefore, pursuant to Fed. R. Civ. P. 26(b)(2)(C)(iii), Opposer's Motion to Compel should be denied.

IV. Opposer's Second Request – Answering Interrogatory Nos. 36 and 38 in Full.

Opposer's Second Request Should Be Denied Because Applicant Has Already Answered and Supplemented Its Responses to Interrogatory Nos. 36 and 38, and Because Opposer Is Seeking Irrelevant Evidence that Applicant Simply Cannot Recall.

Interrogatory No. 36 states in its entirety: "Identify all individual(s) and/or organizations(s) with whom or which Applicant has consulted in connection with Opposer's claims against Applicant and/or this Opposition." [See Robertson Decl. ¶ 15, Exhibit M, p. 26.] Applicant has responded to this Interrogatory by providing the identity of five individuals, as well as with an indication of "Miscellaneous friends, family, and acquaintances." [*Id.* at Exhibit M, pp. 25–26.] Interrogatory No. 38 states in its entirety: "Identify all opinions and/or other advice received by Applicant concerning the likelihood of confusion between Applicant's Mark and Opposer's Marks and/or the merits of Opposer's claims against Applicant and/or this Opposition." [*Id.* at Exhibit M, p. 28.] Applicant has responded to this Interrogatory by directing Opposer to the same individuals identified in response to Interrogatory No. 36, as well as an indication of "friends, family, and acquaintances." [*Id.*] Accordingly, Applicant has fully complied with this Interrogatory to the best of its abilities, and there is simply nothing further to supplement.

Both of Applicant's principals, Ms. Dexter and Mr. Owen, are small business owners who live and breathe their business, Innovation Brewing. Moreover, they spend by far the majority of their days and evenings at their brewery and pub, where they regularly engage with patrons. Of course Ms. Dexter and Mr. Owen have discussed the present opposition with patrons and others that they run into throughout their business and personal lives. Ms. Dexter and Mr. Owen feel attacked by the present opposition and Opposer's tactics, and therefore it is natural that they would have discussed the opposition with others. But Ms. Dexter and Mr. Owen cannot

be expected to recall every single individual with whom they have discussed this opposition—hence, Applicant’s broad indication of “miscellaneous friends, family, and acquaintances” in Applicant’s responses to Interrogatory Nos. 36 and 38. Applicant provided this broad, catch-all statement in a proactive effort to avoid a motion such as the present motion. That is, in view of the history of Opposer’s tactics to date, Applicant would not have been surprised if—following Opposer somehow discovering the identity of a random individual not specifically identified by Applicant but with whom Applicant has discussed the present opposition, including whether or not the individual believes a likelihood of confusion to exist between the parties’ marks—Opposer would have used such information in the form of “gotcha, you didn’t identify random person X in response to Interrogatory Nos. 36 and 38” as a basis for a motion to compel or motion for sanctions. Moreover, Applicant’s recent supplementing of its original response to Interrogatory No. 38 to include “friends, family, and acquaintances” followed the 30(b)(6) deposition of Ms. Dexter, during which Ms. Dexter was hounded as to the identity of more individuals with whom she may have discussed the present opposition but whose identities she could not recall. In addition, Mr. Owen testified that following the recent press coverage of the present opposition, several local members of the public randomly stopped and attempted to engage in conversation regarding this opposition. [See Gates Decl. ¶ 8, Exhibit A3, p. 75, line 25–p. 76, line 21.] Accordingly, Applicant supplemented its response in an effort to hopefully avoid Applicant having to expend additional, unnecessary legal fees defending an intent-to-use application, such as in connection with Opposer’s Motion to Compel. Applicant’s efforts failed in this regard, and Applicant fails to see how these Interrogatories can be further supplemented or how further supplementing these Interrogatories—if even possible—would have any value to Opposer in making its case. Applicant can only conclude that Opposer’s

Motion to Compel is yet another display of the dilatory tactics that Opposer has pursued throughout this opposition. For these reasons, Opposer's Second Request should be denied.

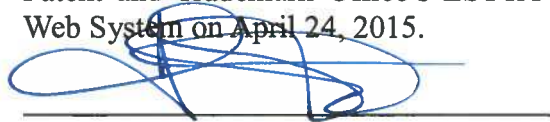
V. Conclusion.

Ultimately, Opposer's Motion to Compel, if granted, will result in an undue burden to Applicant without production of any additional relevant evidence that will aid Opposer in establishing a likelihood of confusion between Applicant's Mark and Opposer's marks or the mere descriptiveness of Applicant's Mark. For the foregoing reasons, Applicant respectfully requests that Opposer's Motion to Compel be denied in full.

DATED this 24th day of April, 2015.

CERTIFICATE OF E-FILING

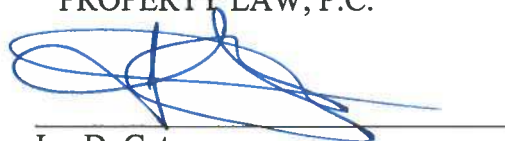
I hereby certify that this correspondence is being transmitted electronically via the United States Patent and Trademark Office's ESTTA-Web System on April 24, 2015.



Ian D. Gates

Respectfully submitted,

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PROPERTY LAW, P.C.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Response to Opposer's Motion to Compel is being served on Opposer by First Class Mail and on April 24, 2015 to:

Sarah M. Robertson
Dorsey & Whitney LLP
51 West 52nd Street
New York, NY 10019-6119

A handwritten signature in blue ink, appearing to read 'Ian D. Gates', is written over a horizontal line.

Ian D. Gates
Of Attorneys for Applicant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BELL'S BREWERY, INC.,)	
)	Opposition No. 91215896
Opposer,)	
)	Application Serial No. 85/929,587
v.)	
)	
INNOVATION BREWING,)	
Applicant.)	

**DECLARATION OF IAN D. GATES IN SUPPORT OF APPLICANT'S
RESPONSE TO OPPOSER'S MOTION TO COMPEL**

I, IAN D. GATES declare as follows:

1. I am an attorney at DASCENZO Intellectual Property Law, P.C., representing Applicant, Innovation Brewing ("Applicant"), in the above captioned Opposition proceeding. I am licensed to practice law in the State of Oregon. I submit this Declaration for the purpose of setting forth certain facts and identifying documentary exhibits in support of Applicant's Response to Opposer's Motion to Compel filed on April 9, 2015.
2. Exhibit A1 hereto is a true and correct copy of a print-out of the TESS screen for Applicant's Application Serial No. 85/929,587 for the INNOVATION BREWING mark.
3. On March 19–20, 2015, Nicole Dexter, on behalf of Applicant, was deposed by Opposer, and on March 20, 2015, Charles Owen was deposed by Opposer.
4. Exhibit A2 hereto includes excerpts from a true and correct copy of the transcript of the 30(b)(6) deposition of Nicole Dexter.
5. On March 31, Applicant first received a partial copy, corresponding to the first

day of the deposition, of the transcript of the 30(b)(6) deposition of Applicant. On April 1, 2015, Applicant first received the remainder of the transcript, corresponding to the second day of the deposition, of the 30(b)(6) deposition of Applicant.

6. On March 31, 2015, I informed opposing counsel that I would be out of the office that week for a family matter, and I was out of the office to attend to a family matter.

7. Opposer served Opposer's First Set of Requests for Production on October 2, 2014, and on October 29, 2014, Applicant timely served responses to Opposer's First Set of Requests for Production.

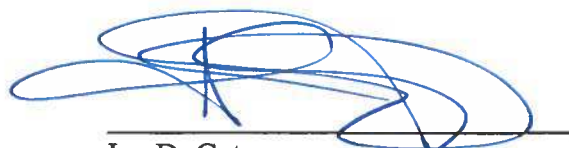
8. Exhibit A3 hereto includes excerpts from a true and correct copy of the transcript of the 30(b)(1) deposition of Charles Owen.

9. I forwarded signed verifications and errata sheets for the deposition transcripts of Ms. Dexter and Mr. Owen to the reporting company on April 15, 2015.

10. On April 16, 2015, I sent a letter via email to opposing counsel designating select portions of the deposition transcripts pursuant to the protective order in place in this Opposition.

Pursuant to 28 U.S.C. §1746, I, Ian D. Gates, further declare under penalty of perjury that all statements made of my own knowledge are true and all statements made on information and belief are believed to be true.

Dated: April 24th, 2015

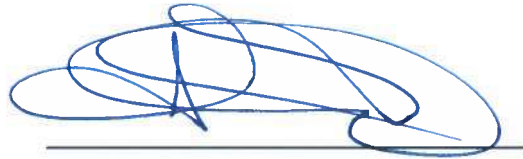


Ian D. Gates

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Declaration of Ian D. Gates in Support of Applicant's Response to Opposer's Motion to Compel is being served on Opposer by First Class Mail on April 24, 2015 to:

Sarah M. Robertson
Dorsey & Whitney LLP
51 West 52nd Street
New York, NY 10019-6119

A handwritten signature in blue ink, consisting of several overlapping loops and a final horizontal stroke, positioned above a thin horizontal line.

Ian D. Gates
Of Attorneys for Applicant

EXHIBIT A1



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Innovation Brewing

Word Mark INNOVATION BREWING
Goods and Services IC 032. US 045 046 048. G & S: Beer
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85929587
Filing Date May 12, 2013
Current Basis 1B
Original Filing Basis 1B
Published for Opposition October 15, 2013
Owner (APPLICANT) Innovation Brewing LIMITED LIABILITY COMPANY NORTH CAROLINA 414 W Main St. Sylva NORTH CAROLINA 28779
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BREWING" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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EXHIBIT A2

1 NICOLE DEXTER

2 Q. Would you take a look at what's been
3 marked as Exhibit 1, please.

4 A. Yes.

5 Q. And have you seen that before?

6 A. Yes.

7 Q. When did you first see that?

8 A. When it was given to us.

9 Q. Well, when was that?

10 A. I really could not recall.

11 The day that it was sent to my
12 attorney.

13 Q. Okay. And when --

14 A. I don't see a date on here, so --

15 Q. Well, it was --

16 A. March 3rd, it looks like.

17 Q. Okay. So on or about March 3rd?

18 A. Yes.

19 Q. Would you take a look at the deposition
20 topics in Schedule A.

21 A. Yes.

22 Q. And are you the person that's the most
23 knowledgeable about the reasons for the selection
24 and adoption of the mark? And the "mark" here is
25 defined as the mark that's in your trademark

1 NICOLE DEXTER

2 application that's being opposed.

3 A. I would say yes.

4 Q. And also your company's knowledge of
5 Bell's Brewery and its marks?

6 A. Yes.

7 Q. No. 2.

8 A. You're just asking if I'm most
9 knowledgeable about these things?

10 Q. Are you the most knowledgeable person
11 at the company about that?

12 A. Yes.

13 Q. Topic 3, "Instances of actual confusion
14 between your company's use in mark and Bell's use of
15 its marks," are you the most knowledgeable person
16 about that?

17 A. Well, we didn't experience any, so I
18 would say I don't know how I could be knowledgeable
19 about that.

20 Q. Okay. No. 4, "Applicant's efforts to
21 protect and seek registration of Applicant's mark,"
22 are you the most knowledgeable person at the company
23 about that?

24 A. Yes.

25 Q. Your advertisements, marketing, and

1 NICOLE DEXTER

2 promotional materials and future plans for
3 marketing, are you knowledgeable about that?

4 A. Yes.

5 Q. Is there anybody with more knowledge
6 than you?

7 A. No.

8 Q. Your future business plans for your
9 products, are you the person with the most knowledge
10 about that?

11 A. Yes.

12 Q. Is there anybody else that's as
13 knowledgeable as you are on that topic?

14 A. I don't believe so.

15 Q. The intended class of purchasers of
16 your company's products, would you be the most
17 knowledgeable witness on that topic?

18 A. Yes.

19 Q. And your distribution and sales of
20 products, same -- same answer?

21 A. Yes.

22 Q. Communications between your company and
23 any third party about Bell's marks or Bell or any
24 other issues in this opposition, is there anybody
25 with more knowledge than you?

1 NICOLE DEXTER

2 A. No.

3 Q. The collection of documents in response
4 to Bell's discovery request and request for
5 production of documents, is there anyone besides you
6 that's got more knowledge than you on that?

7 A. No.

8 Q. And do you have knowledge about that?

9 A. Yes.

10 Q. And also the identity of other people
11 who may have knowledge about any of these other
12 topics, is there anyone besides you that would be
13 more knowledgeable about that?

14 A. No.

15 Q. Did you do anything to prepare for the
16 deposition today?

17 A. Yes.

18 Q. What did you do?

19 A. I reviewed these deposition topics. We
20 reviewed any documents we produced to you.

21 Q. Anything else? Did you talk to
22 anybody?

23 MR. REISER: I will object to the
24 extent that it asks her to disclose any
25 attorney-client privileged information.

1 NICOLE DEXTER

2 MS. PROGOFF: It's not privileged that
3 she spoke with you.

4 BY MS. PROGOFF:

5 Q. Did you talk with anybody?

6 MR. REISER: I am just stating the
7 objection. You can ask the question, of
8 course.

9 BY MS. PROGOFF:

10 Q. Okay. You can answer the question.

11 A. Yes, I spoke with my attorneys.

12 Q. Anyone else?

13 A. No.

14 Q. Did you talk with your partner about
15 it?

16 A. Chip? Charles?

17 Q. Yes.

18 A. Yes. Yes.

19 Sorry. I assume he is -- was -- yes.

20 The answer is yes.

21 Q. And what did you discuss with him?

22 A. We just went over everything I just
23 said to you. We just did that together.

24 Q. Did you look at any documents with him?

25 A. Yes.

1 NICOLE DEXTER

2 Q. Which ones?

3 A. The documents we submitted to you.

4 Q. Anything else?

5 A. No.

6 Q. Okay. Now, you testified a little
7 while ago that you were involved in conceiving the
8 idea of a brewery in 2012; is that correct?

9 A. Correct.

10 Q. Okay. What was -- how did that come
11 about?

12 A. Chip and I both -- Charles. Sorry.
13 For the record, he's Chip to me. His
14 name is Charles.

15 Q. Okay.

16 A. So I am sure you'll hear me refer to
17 him as Chip.

18 Q. Either name is fine, whatever it is.

19 A. Chip and I both share a love and
20 passion of brewing. So our love kind of turned into
21 us brewing a lot together and developed into
22 realizing that we may want to pursue this as our
23 life. So we started to realistically talk about it,
24 figure out where we might want to do that.

25 What was your question again? I don't

1 NICOLE DEXTER

2 The Tributary Brewing Company.

3 Q. And this is something that you set up
4 jointly with your partner?

5 A. Yes.

6 Q. Okay. When in the chronology of things
7 did you decide to change the name?

8 A. We decided we were going to change the
9 name pretty much as soon as we received the office
10 action saying somebody else had a preceding
11 application.

12 Q. Did you receive any kind of an
13 objection from the company that owned that other
14 mark?

15 A. No.

16 Q. Okay. And then the next step was to
17 pick a new name; is that right?

18 A. That's right.

19 Q. And what was the name that you picked?

20 A. Well, for a while we couldn't think of
21 a name. We just kind of continued on building our
22 equipment and building our keg washer and things
23 like that, kind of trying to brainstorm.

24 And then the name came about while we
25 were in our assembling walk-in cooler. We bought an

1 NICOLE DEXTER

2 old, used walk-in cooler from -- I think it was
3 Craigslist in Virginia. We had to drive a little
4 '83 diesel Datsun pickup to pick it up, with a
5 trailer attached, and, you know, bring it back to
6 Sylva.

7 And we were putting it back together,
8 and we learned that people buy new walk-in coolers
9 for a reason: Because old walk-in coolers don't
10 like to get taken apart and put back together many
11 times.

12 So we were constructing it, and we
13 couldn't get -- we finally got all the sides up -- I
14 mean, if we bought a new cooler and had a
15 professional install it, it would have probably
16 taken three hours. It took Chip and I days to get
17 this walk-in cooler together.

18 So we put all the walls together,
19 finally. We were trying to attach the ceiling
20 panels. So it was the first panel, and we couldn't
21 get the ceiling panel close enough to the side panel
22 to actually lock into place.

23 So I had to climb up on top of the
24 ceiling panel and be really careful not to, you
25 know, put my weight too far over, because it would

1 NICOLE DEXTER

2 have, you know, collapsed and dumped me onto the
3 concrete floor. And I was kind of trying to jam my
4 body weight into the edge of the ceiling panel so it
5 would come close enough so he could latch it into
6 place.

7 And we finally got it latched, and it
8 just felt like such a victory, and I leaned over and
9 said, "What about Innovation Brewing? It seems like
10 that has been what we had to do to make this work,
11 is to get innovative, because we don't have the
12 resources or the money to buy stuff new like most
13 people do."

14 Q. Well, is your company innovative in any
15 other ways?

16 A. We are innovative in our processes of
17 building the brewery. I would say that's about it.
18 We -- you know, Chip, being a mechanical engineer,
19 designed and built his own keg washer, which most
20 breweries our size don't have automated keg washers
21 because they are extremely expensive. So Chip built
22 it, and he programmed the whole thing.

23 And he did the same thing with our
24 brewing equipment, which is all an electric brew
25 system, so it has an electronic control panel. He

1 NICOLE DEXTER

2 built that whole thing, programmed it, I mean, just
3 stuff that is unheard of in the industry. People
4 can't just do that usually. It's just because I am
5 lucky enough to have an engineer as my partner.

6 So I would say that we are very
7 innovative in our whole respect to getting the
8 brewing together, and that's where the name comes
9 from.

10 Q. Are you innovative in any of the
11 products that you sell?

12 A. No. Our beer is just beer, like
13 everybody else's --

14 Q. Okay.

15 A. -- made from the same four ingredients
16 that everybody else makes them from.

17 Q. Well, are there any flavors you have
18 that are unusual?

19 A. We put lots of different things in
20 beer, but I wouldn't say anything that nobody else
21 has tried to do or nothing innovative in any sense.

22 Q. Okay. Were there any other marks that
23 you considered adopting when you were thinking about
24 Innovative -- or Innovation as your name?

25 A. No. I can't think of anything that we

1 NICOLE DEXTER

2 came up with that we seriously considered.

3 Q. Well, what were some of the things that
4 you considered and decided not to pursue?

5 A. I'm trying to think if there's any, but
6 I can't recall anything that stuck with me in
7 between Tributary and Innovation.

8 Q. Do you have any documents that show
9 lists or any other things that identify what you
10 were considering?

11 A. No.

12 Q. So once you decided on Innovation, did
13 you do anything to make sure that it was available?

14 A. Absolutely.

15 Q. What did you do?

16 A. We searched through the USPTO's
17 database to make sure that there was no brand
18 registered as Innovation. We did a Google search
19 trying to find anything -- any brand that was
20 Innovation in the world of beer. We searched the
21 Brewers Association website, because they have a
22 comprehensive list of all the breweries in the U.S.

23 Q. What do they have on the list? Is it
24 product names? Company names? Some combination?

25 A. Yes, company names.

1 NICOLE DEXTER

2 Q. So if somebody was using a mark on a
3 product but it wasn't a company name, it wouldn't
4 show up?

5 A. On the Brewers Association website?

6 Q. Yes.

7 A. Not that I know of. It's just a list
8 of breweries, not beers or anything else.

9 Q. Okay. Anything else?

10 A. That's all I can recall.

11 Q. Did you order a search from a
12 professional search firm?

13 A. Like, hire an attorney or --

14 Q. Well, that was my next question.

15 A. Oh.

16 Q. Did you consult with an attorney?

17 A. No.

18 Q. Did you investigate any companies or
19 uses that turned up in the searches that you did?

20 A. I -- no. I didn't find any searches
21 under the category of beer that came up for
22 Innovation.

23 Q. Do you have copies of the searches that
24 you conducted?

25 A. No.

1 NICOLE DEXTER

2 Q. What happened to them?

3 A. I never retained them. This was my
4 first shot at a brewery.

5 If I ever open up a second one, I will
6 be sure to retain copies of things like that. But
7 this was all new to me, and I didn't retain any
8 copies of searches.

9 Q. Okay. And at some point you changed
10 the name of your company from Tributary to
11 Innovation; is that right?

12 A. Right.

13 Q. And what did you do for that -- to
14 accomplish that?

15 A. We wrote up a new operating agreement.
16 We amended our Articles of Organization. We updated
17 our Facebook page.

18 MS. PROGOFF: Okay. Would you mark as
19 the next exhibit North Carolina Department of
20 State document Amending Articles of
21 Incorporation of Tributary Brewing.

22 (THEREUPON, Exhibit 3 was marked for
23 identification).

24 BY MS. PROGOFF:

25 Q. Would you take a look at what's been

1 NICOLE DEXTER

2 believe.

3 Q. Now, what is Bogart's?

4 A. It's a restaurant in Sylva.

5 Q. And how long was Exhibit 9 appearing in
6 their food menus?

7 A. I'm not sure.

8 Q. Do you know how many menus it appeared
9 on?

10 A. I do not.

11 Q. Pardon?

12 A. I do not know.

13 Q. Going back to the last exhibit, Exhibit
14 10 --

15 A. Uh-huh.

16 Q. -- who made the tap handles that appear
17 as the last page of that exhibit?

18 A. Charles.

19 Q. And who designed them?

20 A. Charles.

21 Q. Now, you also -- are there any other
22 ways that you promote your business or your
23 products? Other than the things that we've
24 discussed here today.

25 A. Facebook, website. But we've discussed

1 NICOLE DEXTER

2 all those things, so -- our bartenders.

3 Q. What do you mean by your bartenders?

4 A. Our bartenders promote products to
5 customers.

6 Q. And how do they do that?

7 A. By answering questions for them, giving
8 them what they request.

9 Q. So filling an order for a drink is --
10 is promotional activity?

11 A. They speak highly of the product if
12 people have questions, so I feel like they promote
13 it.

14 Q. So if someone goes in and says they
15 want a glass of your lager, and the bartender fills
16 the glass and hands it to them, that's promotional?

17 A. I mean, I don't think I said that
18 everything that comes out of their mouth is
19 promotion; but if someone comes in and states, "Are
20 the beers good here?" they are going to promote the
21 product.

22 Q. Are there any other activities or
23 materials that you would view as promotional in --
24 with respect to your products?

25 A. Not that I can recall.

1 NICOLE DEXTER

2 Q. But you didn't look at any records to
3 make sure that the information that you had is
4 complete; is that right?

5 A. Regarding the website URL, I did not
6 look into that.

7 Q. Or the Twitter handle; isn't that
8 right?

9 A. Oh, right.

10 Q. Now, when your company opened for
11 business, was the -- operating a brewpub its initial
12 activity?

13 A. Yes.

14 Q. Were you shipping beer to anybody? Any
15 third party?

16 A. No.

17 Q. Before the brewpub opened -- I think
18 you testified that was October 18, 19 -- 2013?

19 A. Yeah.

20 Q. Is that right?

21 A. Uh-huh.

22 Q. Did you obtain any licenses to operate
23 a brewpub or to sell beer?

24 A. Yes.

25 Q. Which licenses?

1 NICOLE DEXTER

2 A. We have a federal TTB license.

3 Q. Under what name?

4 A. Innovation Brewing, I believe.

5 Q. When did you obtain that license?

6 A. I'm not sure of the date.

7 MS. PROGOFF: I don't think we've
8 received a copy. And we request that it be
9 produced.

10 MR. REISER: Are we referring to a
11 specific interrogatory request for production?

12 MS. PROGOFF: I think it falls under
13 10.

14 MR. REISER: Interrogatory 10 or
15 request for production?

16 MS. PROGOFF: Document request.

17 MR. REISER: Let me look at that
18 quickly.

19 MS. PROGOFF: It falls under 12. It
20 falls under 13.

21 MR. REISER: I mean, those are -- we
22 would restate our objection for overly broad,
23 vague, very difficult to ascertain the type of
24 information you're looking for.

25 But subject to those objections, we

1 NICOLE DEXTER

2 will make them available to you if they're
3 available.

4 MS. PROGOTT: Well, I think they're
5 crucial to this company's use.

6 MR. REISER: I'll note that.

7 MS. PROGOTT: And they certainly fall
8 within the scope of those requests.

9 MR. REISER: And we would object that
10 they do not.

11 MS. PROGOTT: All right.

12 BY MS. PROGOTT:

13 Q. Well, you mentioned that you had a TTB
14 license. Who applied for the TTB license?

15 A. I don't recall if it was myself or
16 Charles.

17 Q. Okay. What was the license for?

18 A. Manufacturing beer.

19 Q. Did you get any labels approved?

20 A. We have labels approved in our state,
21 which is all the State of North Carolina requires.

22 Q. But you don't have any federal label
23 approvals?

24 A. I'm not sure.

25 Q. Well, who would know that?

1 NICOLE DEXTER

2 A. Charles may. But we would probably
3 have to look back through our records.

4 Q. When did you apply for the TTB license?

5 A. I don't recall the date we applied for
6 it.

7 Q. Well, was it before you opened the
8 brewpub?

9 A. Yes.

10 Q. Did you obtain the license before the
11 brewpub opened?

12 A. Yes.

13 Q. And whose name is the license in?

14 A. I don't recall. Myself or Charles
15 probably.

16 Q. Do you have any North Carolina license
17 -- state licenses --

18 A. Yes.

19 Q. -- to operate the brewpub?

20 A. Yes.

21 Q. What licenses do you have?

22 A. I don't know the names of the licenses.
23 They're issued by the ABC.

24 Q. And when did you obtain those licenses?

25 A. I'm not sure of the date.

1 NICOLE DEXTER

2 Q. Were you involved in applying for any
3 licenses either from North Carolina or the TTB?

4 A. Yes, I believe so.

5 Q. Which ones?

6 A. I believe I was involved in all of
7 them.

8 MS. PROGOF: Okay. Would you mark,
9 please, as the next exhibit a two-page document
10 entitled, I guess, "Business Information
11 Permittee Information."

12 (THEREUPON, Exhibit 14 was marked for
13 identification).

14 THE COURT REPORTER: It's Exhibit 14.

15 MS. PROGOF: Okay.

16 BY MS. PROGOF:

17 Q. Do you see what's been marked as
18 Exhibit 14?

19 A. Yes.

20 Q. Do you recognize that document?

21 A. No.

22 Q. Have you ever seen this before?

23 A. I'm not sure. It doesn't look very
24 familiar to me.

25 Q. Have you ever seen any documents of the

1 NICOLE DEXTER

2 same type as this?

3 MR. REISER: I will object to the form
4 of the question.

5 But you can answer.

6 BY MS. PROGOFF:

7 Q. Do you understand the question?

8 A. No, not really.

9 Q. Have you ever seen any other documents
10 with this type of -- the same type of information
11 that appears on Exhibit 14?

12 A. No.

13 Q. Would you look on the first page, under
14 the section entitled "permits." And you see there
15 are two permit numbers there?

16 A. Yes.

17 Q. And you see one of them seems to refer
18 to malt beverage on premises and the other is
19 unfortified wine on premises?

20 A. Yes.

21 Q. Do you sell unfortified wine in your
22 brewpub?

23 A. Yes.

24 Q. How long have you been doing that?

25 A. Since we opened.

1 NICOLE DEXTER

2 Q. In other words, in October of 2013?

3 A. Yes.

4 Q. And do you see the date on which the
5 permits were issued?

6 A. Yes.

7 Q. Did you have a previous permit?

8 A. Yes. They were temporary permits.

9 This is the permanent permit issued, I would assume.

10 Q. You would assume or you know?

11 A. I would assume.

12 Q. So you don't know one way or the other?

13 A. I know that we had a license before we
14 opened, yes.

15 Q. And whose name was the license in?

16 A. I don't remember.

17 Q. Well, if one were going to go and find
18 the license, what names would you look under?

19 A. Innovation Brewing, I would assume.

20 Q. Do you have any understanding of what
21 the word "registered" refers to at the end of that
22 section entitled "Permits"?

23 A. No.

24 Q. Did you answer the question?

25 A. Yes. I said "no."

1 NICOLE DEXTER

2 Q. Oh. I'm sorry. I didn't hear you.

3 A. Yeah.

4 Q. Would you look on the bottom of the
5 second page of that exhibit.

6 Do you see there are 24 things listed
7 under "authorized product," or at least it has the
8 number 24?

9 A. Yes.

10 Q. Are those all products that you've sold
11 at your brewpub?

12 A. Yes.

13 Q. Have you shipped any of them to third
14 parties?

15 A. No.

16 Q. Has Innovation Brewing made any sales
17 of packaged beer, in other words, in kegs, in
18 bottles, in cans, in some other sort of container --

19 A. Yes.

20 Q. -- to any third parties?

21 A. Yes.

22 Q. What types of beer have you sold in
23 that way?

24 A. We have sold kegs.

25 Q. Anything else?

1 NICOLE DEXTER

2 A. Some in Asheville and the rest in
3 Jackson County.

4 Q. So they're all in North Carolina; is
5 that correct?

6 A. For now, yes.

7 MS. PROGOTT: Why don't we take a short
8 break. We've been going for awhile.

9 MR. REISER: Yeah. I was just about to
10 ask.

11 (Recess in Proceedings).

12 BY MS. PROGOTT:

13 Q. Now, you had testified earlier that
14 your company got a TTB permit?

15 A. A TTB permit? Yes.

16 Q. What kind did you get?

17 A. What kind?

18 Q. Uh-huh.

19 A. I'm not sure of the name of it.

20 Q. Well, what was it for?

21 A. To make beer.

22 Q. To make it? To sell it? To ship it?
23 What?

24 A. All of the above. To make, sell.

25 Q. Did you get your labels approved?

1 NICOLE DEXTER

2 A. I don't recall.

3 Q. Who would know that?

4 A. Maybe Charles.

5 Q. Maybe Charles. Anybody else?

6 A. No.

7 Q. So either Charles would know or nobody
8 in -- nobody knows? Nobody at the company knows?

9 A. TTB won't issue a permit if everything
10 isn't met that they need.

11 Q. Well, I'm asking you what kind of
12 permits you have. You said you got one.

13 A. We do. I just don't know the exact
14 name that you're looking for.

15 Q. Do you have a COLA?

16 A. I'm not sure.

17 MR. REISER: Object to the form of the
18 question.

19 Can you explain what a COLA is, first?

20 MS. PROGOFF: It's not my job to
21 explain to the witness what it is.

22 MR. REISER: You can answer.

23 THE WITNESS: I'm not sure.

24 BY MS. PROGOFF:

25 Q. Do you have a brewer's notice?

1 NICOLE DEXTER

2 A. Yes.

3 Q. Do you have a permit to participate in
4 beer festivals?

5 A. Yes, I believe so.

6 Q. From North Carolina?

7 A. Yes.

8 Q. Do you have one from anybody else?

9 A. I'm not sure.

10 MS. PROGOFF: Can you mark, as the next
11 exhibit, a Trademark/Service Mark application,
12 serial number -- I don't have a serial number.
13 A Trademark/Service Mark application for a
14 principal register.

15 (THEREUPON, Exhibit 17 was marked for
16 identification).

17 THE COURT REPORTER: Exhibit 17.

18 MS. PROGOFF: Okay.

19 THE WITNESS: Thank you.

20 BY MS. PROGOFF:

21 Q. Would you take a look at what's been
22 marked as Exhibit 17. Do you recognize that
23 document?

24 A. Yes.

25 Q. What is it?

1 NICOLE DEXTER

2 A. It's the application to register the
3 Innovation Brewing mark.

4 Q. And that's the mark that's being
5 opposed in this proceeding; is that correct?

6 A. That's correct.

7 Q. And who applied to register this mark?

8 A. I did.

9 Q. In your own name?

10 A. Yes.

11 Q. Are you the owner of the mark, you
12 personally?

13 A. I'm not sure.

14 Q. You're not sure if you own the mark?

15 A. No.

16 MR. REISER: Can I object to the form
17 of the question? Are you asking Nicole Dexter
18 or Innovation Brewing?

19 MS. PROGOTT: I am asking Nicole
20 Dexter, who put herself down as the owner of
21 the mark in this application --

22 MR. REISER: That's fine. I was just
23 asking you to clarify the question.

24 BY MS. PROGOTT:

25 Q. Do you see under -- in the line right

1 NICOLE DEXTER

2 under "mark information" it says "Innovation
3 Brewing"?

4 A. Yes.

5 Q. Okay. And then would you look, please,
6 at about two-thirds of the way down the second page,
7 there's a space that says "Disclaimer."

8 Do you find that?

9 A. Yes.

10 Q. And it says, "No claim is made to the
11 exclusive right to use 'brewing' apart from the mark
12 as shown."

13 A. Correct.

14 Q. Do you find that?

15 A. Yes.

16 Q. And you agreed to that disclaimer?

17 A. Yes.

18 Q. And so the mark -- the part of the mark
19 that you're seeking to have protected is the word
20 "Innovation"; is that right?

21 A. As the brand name, yes.

22 Q. "Innovation" alone?

23 A. Well, "Innovation Brewing." I just
24 can't claim that I own "brewing," I believe is what
25 that's saying.

1 NICOLE DEXTER

2 Q. Okay. But you're claiming that you own
3 "Innovation"; is that right?

4 A. "Innovation Brewing."

5 Q. But you're claiming exclusive rights to
6 the word "Innovation"; isn't that right?

7 MR. REISER: I'll object to the extent
8 that it asks her to form a legal opinion. But
9 she can answer the question.

10 BY MS. PROGOFF:

11 Q. What's your understanding of what
12 you're claiming?

13 A. My understanding is that I'm claiming
14 ownership to "Innovation Brewing," and this
15 disclaimer just says that I just can't say I own the
16 word "brewing."

17 Q. But you can say that you own the word
18 "Innovation"; is that correct?

19 A. In association with "brewing."

20 Q. Do you see under the section about
21 owner of the mark, it says "d/b/a Innovation
22 Brewing"? Is Innovation Brewing a name that you
23 were doing business under?

24 A. Innovation Brewing is the name of the
25 business.

1 NICOLE DEXTER

2 Q. Isn't it Innovation Brewing LLC?

3 A. That's our legal LLC name.

4 Q. Right. Well, isn't the legal entity
5 who should -- the owner of the mark, or is it you
6 personally doing business as Innovation Brewing?

7 A. Innovation Brewing is the owner of the
8 mark.

9 Q. And why is your name there as the owner
10 of the mark, then?

11 A. I'm not sure.

12 Q. Well, you put it there, didn't you?

13 A. I did.

14 Q. And did you sign this application?

15 A. I did.

16 Q. And you swore that everything in it was
17 true and correct?

18 A. To the best of my knowledge.

19 MS. PROGOTT: Let's mark, as the next
20 exhibit, a Trademark/Service Mark Application
21 Serial No. 86423712.

22 (THEREUPON, Exhibit 18 was marked for
23 identification).

24 BY MS. PROGOTT:

25 Q. Would you take a look at what's been

1 NICOLE DEXTER

2 second. I know we had lots of friends and family
3 around.

4 My mom and her boyfriend are from South
5 Carolina. They went home with beer.

6 Q. Anybody else from out of state?

7 A. Not that I can recall at the moment.

8 Q. Have you talked to any reporters about
9 this proceeding?

10 A. About the proceeding? What do you mean
11 by "proceeding"?

12 Q. This opposition.

13 A. The opposition? Yes.

14 Q. Who have you talked to?

15 A. Tony Kiss from Asheville Citizen-Times.

16 Q. Anybody else?

17 A. Nick Breedlove from -- what is he
18 from? -- The Sylva Herald maybe.

19 Q. Anyone else?

20 A. Garret. I can't remember Garret's last
21 name from Smoky Mountain News.

22 Q. From where?

23 A. Smoky Mountain News.

24 MR. REISER: Do you guys want his name
25 for the record?

1 NICOLE DEXTER

2 MS. PROGOTT: Sure.

3 MR. REISER: It's Garret Woodard.

4 MS. PROGOTT: W-O-O-D-A-R-D?

5 MR. REISER: Actually, Woodward. I
6 shouldn't pipe in when I don't know the actual
7 answer, but I think it's Garret Woodward.

8 MS. PROGOTT: Okay.

9 BY MS. PROGOTT:

10 Q. Anybody else?

11 A. The news station WLOS.

12 Q. LOS?

13 A. LOS.

14 Q. Is that local here in North Carolina?

15 A. I think so. I haven't owned a
16 television for, like, 10 years, so I am honestly not
17 quite sure about their reach.

18 Q. And it is a TV station --

19 A. Uh-huh.

20 Q. -- or radio?

21 A. TV.

22 Q. And is there a person that you spoke to
23 there?

24 A. I don't know the name of the people.

25 There's two men that came out on their own. Not

1 NICOLE DEXTER

2 contacted by us. I have no idea their names.

3 Q. Anybody else?

4 A. I think that's it.

5 Q. Did you contact the other three men
6 that you mentioned just now?

7 A. The only person I contacted was Tony
8 Kiss.

9 Q. And when did you contact him?

10 A. I don't remember the date, but
11 sometime, I would say, last week or the week before.

12 Q. Within the last two weeks?

13 A. Yes.

14 Q. And why did you contact Mr. Kiss?

15 A. Because we wanted to tell our story.

16 Q. Tell your story meaning what?

17 A. Of this opposition.

18 Q. And what's your story of this
19 opposition?

20 A. That we filed for a mark and it's being
21 opposed.

22 Q. And that was all you told him?

23 A. Well, I believe -- I mean, we told him
24 some stories about why we chose to name it
25 Innovation and why the opposition was opposing.

1 NICOLE DEXTER

2 Q. Say that again. What? The last --

3 A. Why the opposition was opposing. I
4 don't know -- that's what I said. It might not be
5 worded right. But the reasons for the opposition.

6 Q. Oh, okay.

7 Anything else?

8 A. Not that I can recall right now.

9 Q. Did he write an article?

10 A. He did.

11 Q. And where did it appear?

12 A. In the Asheville Citizen-Times.

13 Q. When did it appear?

14 A. Early last week sometime. But I can't
15 recall the exact date.

16 Q. Do you know if he contacted Bell's to
17 get their side of the story?

18 A. Yes, he did.

19 Q. And Nick Breedlove, did he get in touch
20 with you or you got in touch with him?

21 A. He got in touch with me.

22 Q. Do you know what made him get in touch
23 with you?

24 A. Probably the Asheville Citizen-Times
25 story, but I don't know that for certain.

1 NICOLE DEXTER

2 Q. Did he get in touch with you after that
3 story appeared?

4 A. Yes.

5 Q. And has he written a story about this
6 matter?

7 A. Yes.

8 Q. And when did that appear?

9 A. Sometime last week. I'm not sure of
10 the date.

11 Q. And did you talk with him about this
12 matter?

13 A. I did.

14 Q. What did you tell him?

15 A. I didn't disclose any information that
16 wasn't already disclosed, so same sorts of things.

17 Q. And Garret, whose name you can't
18 remember --

19 A. Uh-huh.

20 Q. -- did he contact you or you contacted
21 him?

22 A. He contacted us.

23 Q. When?

24 A. One day last week.

25 Q. Did you talk to him?

1 NICOLE DEXTER

2 A. I did.

3 Q. And what did you tell him?

4 A. Other than -- nothing different than
5 what we already discussed other than we told him
6 kind of that we were feeling a little anxious about
7 the whole thing.

8 Q. You were feeling anxious?

9 A. Uh-huh.

10 Q. In what sense?

11 A. The stress associated with this -- all
12 this.

13 Q. Have you been -- or have you discussed
14 any settlement negotiations with any members of the
15 press?

16 A. No.

17 Q. Have you told any press member about
18 any offers of settlement that you've made or that
19 Bell's has made to you?

20 A. I don't recall if I told any press. I
21 know I've put a personal statement on our Facebook,
22 but I don't recall if we've told the press.

23 Q. And did you write the statement that's
24 on your Facebook page?

25 A. I did.

1 NICOLE DEXTER

2 Q. And when did that appear?

3 A. One day last week. I'm not sure of the
4 exact day.

5 Q. You also mentioned LOS news station.

6 A. WLOS.

7 Q. WLOS. Okay.

8 Did you get in touch with them or they
9 got in touch with you?

10 A. They got in touch with us.

11 Q. And you said two men came out?

12 A. Uh-huh.

13 Q. Did you speak with them?

14 A. Uh-huh.

15 Q. And do you remember either of their
16 names?

17 A. I don't. I don't even know if I got
18 their names.

19 Q. Did anybody else on behalf of your
20 company speak with any of these reporters?

21 A. I believe Charles spoke to WLOS and
22 Tony Kiss and Garret.

23 Q. And you were the only one that spoke
24 with Nick Breedlove?

25 A. I think so, but I don't remember.

1 NICOLE DEXTER

2 Q. And did a story about this matter run
3 on WLOS?

4 A. Yes.

5 Q. When did that happen?

6 A. One day last week.

7 Q. And is that a local news station?

8 A. I'm not quite sure. I think so, but
9 I'm not -- like I said, I don't own a TV. So I'm
10 not sure how far their reach is.

11 Q. Are you familiar with a publication
12 called the Triangle Business Journal?

13 A. No.

14 Q. Do you know somebody or have you ever
15 spoken with anyone named Dathan Kazsuk?

16 A. No.

17 MS. PROGOTT: Okay. Let's mark as the
18 next exhibit a Facebook posting dated
19 March 14th.

20 (THEREUPON, Exhibit 19 was marked for
21 identification).

22 BY MS. PROGOTT:

23 Q. And do you see what's been marked as
24 Exhibit 19?

25 A. I do.

1 NICOLE DEXTER

2 A. They host different educational events
3 of different kinds. We make a collaboration of beer
4 together every year. If somebody is short a bag of
5 rye, you can put out an e-mail and ask if anybody
6 has rye, things of that nature.

7 Q. How long have you been a member of the
8 Asheville Beer Alliance?

9 A. I'm not exactly sure when we joined the
10 alliance. Probably somewhere around the time we
11 opened, but that's just a guess.

12 Q. Is there a membership application or
13 fees?

14 A. There are.

15 Q. Have you been in touch with members --
16 other members of the Asheville Brewers Alliance
17 about this Opposition?

18 A. Other than what we gave you?

19 Q. I am not asking about what you gave me.
20 I'm asking: Have you communicated with
21 them about this?

22 A. Yes.

23 Q. Who did you communicate with about it?

24 A. I told Joe Rowland about the
25 Opposition.

1 NICOLE DEXTER

2 Q. Who is Joe Rowland?

3 A. He is the owner of Nantahala Brewing,
4 president of the ABA.

5 Q. When did you talk to him?

6 A. I don't recall when I first talked to
7 Joe about it.

8 Q. Was it when the Opposition was first
9 filed?

10 A. I really don't recall when I --

11 Q. You don't remember if it was yesterday
12 or two years ago?

13 A. I mean, I know I talked to him when the
14 Opposition was filed. I'm not sure if I talked to
15 him before then. That's the first thing I remember
16 talking to him about, is the Opposition --

17 Q. Did you have any communications with
18 him since then?

19 A. Yeah.

20 Q. What was the most recent one regarding
21 this matter?

22 A. Regarding this matter?

23 He just pretty much just checks in and
24 asks me how I'm doing once in awhile.

25 Q. Anything beyond that?

1 NICOLE DEXTER

2 A. Not really.

3 Q. Do you have any substantive discussions
4 with him?

5 A. What do you mean?

6 Q. Did you tell him what's going on in the
7 Opposition? Did you tell him --

8 MR. REISER: Excuse me. I'm sorry.

9 MS. PROGOFF: That's okay.

10 THE WITNESS: He knows that we're being
11 deposed.

12 BY MS. PROGOFF:

13 Q. How does he know that?

14 A. Because I told him.

15 Q. When did you tell him?

16 A. I'm not sure.

17 Q. And was it three months ago?

18 A. I didn't know about the deposition
19 three months ago.

20 Q. When did you find out about the
21 deposition?

22 A. I believe the date we discovered today
23 was March 6th.

24 Q. And so did you call him on March 6th
25 when you found out about it?

1 NICOLE DEXTER

2 A. I don't remember.

3 Q. Well, did you call him immediately
4 or --

5 A. I don't remember when I called him to
6 talk to him about it.

7 Q. Do we need to get a subpoena out on him
8 to find out that information, or is there some other
9 way we can get it?

10 A. I mean, it was in the last two weeks.
11 Today's the 19th. So sometime between --

12 MR. REISER: Can I -- can I enter an
13 objection really quick for relevancy?

14 I mean, what is the relevancy of all
15 this? I mean, we noticed this in all the
16 interrogatories, these conversations in the
17 ABC -- ABA. I'm sorry.

18 Can you just delineate on that a little
19 bit?

20 MS. PROGOFF: Well, they have been
21 milking the ABA for publicity, and they've been
22 dragging Bell's name in the mud, and we're
23 entitled to find out what's going on about it.

24 MR. REISER: Does that have anything to
25 do with the trademark proceeding --

1 NICOLE DEXTER

2 MS. PROGOTT: Yes, it does.

3 MR. REISER: -- and whether or not this
4 is an intent to use and these are confusing
5 marks?

6 MS. PROGOTT: Well, I think it
7 certainly has to do with their intent here.

8 MR. REISER: With their intent to file
9 a trademark that they filed two years ago and
10 they continued to try to advance the
11 registration, just like your client has done
12 with 23 other marks?

13 MS. PROGOTT: Well, I think they're
14 trying to harm Bell's.

15 MR. REISER: Well, ask her that
16 question. Ask her those questions.

17 I don't understand the relevancy of an
18 ABA conversation. You guys have asked in
19 interrogatories. We objected for relevancy,
20 overly broad; they're vague questions.

21 We provided what we had at the time.

22 If you guys need additional information
23 from her, you can. I am an ABA member. I
24 can -- you know, I mean --

25 MS. PROGOTT: We are not deposing you.

1 NICOLE DEXTER

2 We are deposing her. We are entitled to ask
3 her about her communications regarding Bell's
4 and this matter.

5 MR. REISER: I understand that you are
6 threatening a subpoena right now.

7 MS. PROGOFF: I didn't threaten
8 anything.

9 MR. REISER: Just ask her --

10 MS. PROGOFF: I asked her if that was
11 the only way to get the information. I don't
12 think that's a threat.

13 MR. REISER: Right. Now that I
14 understand on the record what your cause for
15 this line of questioning is, it's fine. We'll
16 go forward, but I wanted it on the record. So
17 go ahead.

18 MS. PROGOFF: Can you read back the
19 last question?

20 (THEREUPON, the above-referred to
21 portion of the Record was read back by
22 the Court Reporter).

23 BY MS. PROGOFF:

24 Q. Okay. Well, within the last two weeks
25 there have been a number of postings online and

1 NICOLE DEXTER

2 articles written about this proceeding. And the
3 ABA's been involved in them, and you have been
4 involved with them.

5 So I want to find out when you got in
6 touch with the ABA and first notified them that all
7 of this was going on.

8 A. When I received the Notice of
9 Opposition, I talked to Joe about it.

10 Q. Okay. And what did you tell him?

11 A. That we received a Notice of
12 Opposition.

13 Q. Did you show him a copy of it?

14 A. I don't recall if I showed him a copy
15 or not. I don't think so. I think he looked it up,
16 but I can't remember exactly.

17 Q. And what did he say to you when you
18 told him about it?

19 A. He thought that there was absolutely no
20 likelihood of confusion and didn't agree with the
21 claim.

22 Q. And is he a trademark expert?

23 A. No.

24 Q. Do you know if he's had any dealings
25 with Bell aside from this matter?

1 NICOLE DEXTER

2 A. I know he knows the Bells. He knows
3 John Mallett.

4 Q. Pardon?

5 A. He knows John Mallett.

6 Q. Do you know if he has done any business
7 with Bell's? Has he ever bought their products, has
8 he ever sold to them, has he ever promoted with
9 them, or anything like that?

10 A. They were on the bus together for this
11 year Nevada beer camp, I know.

12 Q. And when was that?

13 A. August, I believe.

14 Q. Of this year or --

15 A. Of '14.

16 Q. Of 2014?

17 A. Uh-huh. I'm not sure on the date
18 there, but I think it's around that time.

19 Q. When you say they were on the bus with
20 him, do you mean they were on the same bus or they
21 were sitting with them?

22 A. They were on like a party bus around
23 the country for this Beer Camp Across America
24 festival. So I know they interacted.

25 Q. And were you told the substance of any

1 NICOLE DEXTER

2 of those interactions?

3 A. No. I heard a pretty raging dance
4 party took place in the back of the bus with
5 everybody, and that's all I've heard.

6 Q. Do you know whether they discussed this
7 dispute?

8 A. I do not.

9 Q. Now, you also testified a few minutes
10 ago that you told Mr. Rowland -- no, not
11 Mr. Rowland. I'm sorry -- the ABA president --
12 yeah.

13 A. Yeah, that's Mr. Rowland. Uh-huh.

14 Q. -- that you were being deposed --

15 A. Uh-huh.

16 Q. -- within the last two weeks.

17 Have you discussed the substance of any
18 of your testimony with him?

19 A. No.

20 Q. Have you told him about any of the
21 issues in this matter?

22 A. Like what?

23 Q. Any of the things that have come up in
24 this matter.

25 Have you told him what's going on?

1 NICOLE DEXTER

2 A. I mean, other than the basis for
3 opposition, I've talked to him about that.

4 Q. Have you told him about any of the
5 settlement proposals?

6 A. Like the Bells offering 2500 or --

7 Q. Well, any of the things that you've put
8 up on social media and talked to the press about.

9 A. Yeah, I'm sure I talked to him about
10 it.

11 Q. Okay. When's the last time you talked
12 to him about it?

13 A. I don't really recall the last time I
14 talked to him about settlement.

15 Q. Within the last week?

16 A. I don't think so.

17 Q. But you're not sure?

18 A. I'm not sure.

19 Q. Within the last 10 days?

20 A. Well, I guess I'm not really sure on
21 what you're wondering if I talked to him about
22 within the last week.

23 Can you just clarify that?

24 Q. Well, what have you talked to him about
25 in the last week?

1 NICOLE DEXTER

2 A. We've talked about a lot of things.

3 We've talked about beer and all the talented
4 musicians that work for us and -- you know, we talk
5 about things other than the Bell's situation.

6 Q. Well, that's why I'm trying to find out
7 what you've said about the Bell's situation.

8 A. Right. I haven't given him any
9 information that isn't either public or -- really
10 public. Yeah.

11 Q. Well, has he asked you about any of the
12 things that have appeared in the press or on
13 Facebook or Twitter recently?

14 A. Not really. He's asked me if I've seen
15 certain articles, I think, but --

16 Q. And which articles did he mention?

17 A. He asked me if I saw -- I'm not sure
18 what press it was in, but it was about Larry Bell's
19 comments and stuff. He asked me if I saw that.

20 Q. And had you?

21 A. I had not.

22 Q. Anything else he asked you?

23 A. Not that I can think of.

24 Q. Did he ask you what's going on now?

25 A. He asked me a couple days what's going

1 NICOLE DEXTER

2 on now, and I didn't answer because I wasn't sure
3 what to say. I was hoping that we were going to
4 come to some sort of resolution before this, so I
5 just didn't answer his question.

6 Q. Are there any other ABA members that
7 you have spoken to about -- or communicated with in
8 writing about this proceeding besides him?

9 A. Billy Pyatt.

10 Q. And who is Billy Pyatt?

11 A. He owns Catawba Brewing Company.

12 Q. And what did you tell Mr. Pyatt?

13 A. The only communications I've had with
14 Billy Pyatt were very early on, and it was in
15 regards to the Opposition. That's it.

16 Q. Well, when you say "in regards to the
17 Opposition," can you be more specific?

18 A. Yeah. He's a pretty seasoned business
19 person, so I wanted his opinion on whether he felt
20 like we were at error or what we should do.

21 And he also confirmed that he felt
22 there was no likelihood of confusion and didn't see
23 a basis for the Opposition.

24 Q. Did he tell you anything else?

25 A. I don't think so.

1 NICOLE DEXTER

2 Q. Okay. Is there anyone else from the
3 ABA that you spoke with about this proceeding?

4 A. John Lyda.

5 Q. John? Can you spell his last name?

6 A. L-Y-D-A, I think.

7 Q. And who is he?

8 A. He is the head brewer at Highland
9 Brewing Company.

10 Q. And when did you talk to him?

11 A. The same time I talked to Billy. It
12 was the two of them that I was talking to.

13 Q. So that was early on?

14 A. Uh-huh.

15 Q. Have you spoken with him since?

16 A. No.

17 Q. Anyone else?

18 A. I don't believe so. Various members
19 have told me they support us, but I haven't had any
20 conversations with anybody about the proceedings.

21 Q. Have you exchanged e-mails with any of
22 them?

23 A. No, I don't believe so.

24 Well, besides Billy and John. Sorry.
25 We hadn't gotten there.

1 NICOLE DEXTER

2 Yes, I've exchanged e-mails with Billy.

3 Q. Billy or Billy and John?

4 A. I can't remember if John was on that
5 e-mail or not.

6 But we have disclosed everything to you
7 that you have, so...

8 Q. Okay.

9 MS. PROGOFF: Would you mark as the
10 next exhibit a letter addressed to Laura Bell
11 from Billy Pyatt.

12 (THEREUPON, Exhibit 20 was marked for
13 identification).

14 BY MS. PROGOFF:

15 Q. Okay. Would you take a look at Exhibit
16 20 and tell me if you recognize that?

17 A. Yes.

18 Q. And what is it?

19 A. It's a letter to Ms. Bell from Billy
20 Pyatt.

21 Q. Do you know if this letter was sent?

22 A. I don't believe it was sent.

23 Q. Who prepared this letter?

24 A. Billy.

25 Q. Did you have any input into this

1 NICOLE DEXTER

2 letter?

3 A. I did not.

4 Q. Did you review it at some point?

5 A. I did review it.

6 Q. And when was that?

7 A. After he sent it to me.

8 Q. And when was that?

9 A. I don't recall the date. It's probably
10 in the e-mail you have.

11 Q. Why -- what prompted Mr. Pyatt to
12 prepare this letter?

13 A. He was hoping that he could offer some
14 more input on behalf of the ABA that they didn't see
15 any likelihood of confusion.

16 Q. Was that at your prompting?

17 A. We didn't ask him to write a letter.
18 He offered to write a letter.

19 Q. And when he offered, did you tell him
20 that you would like him to do that?

21 A. I told him he was absolutely welcomed
22 to write a letter.

23 Q. Why wasn't it sent?

24 A. We decided not to send it, actually.

25 Q. Why?

1 NICOLE DEXTER

2 A. Well, I think we were still optimistic
3 that we were going to be able to work out some
4 negotiation or settlement, so...

5 MS. PROGOFF: Would you mark as Exhibit
6 21 a collection of e-mails, the first one is
7 dated Monday, June 30th.

8 (THEREUPON, Exhibit 21 was marked for
9 identification).

10 BY MS. PROGOFF:

11 Q. Would you take a look at what's been
12 marked as Exhibit 21. Do you recognize that
13 collection of documents?

14 A. Yes.

15 Q. What is it?

16 A. E-mails between myself and Billy.

17 Q. Did you collect these e-mails?

18 A. I did.

19 Q. Were they edited in any way?

20 A. No.

21 Q. Is there some reason that the complete
22 chain wasn't produced?

23 A. Not to my knowledge. I believe
24 everything was produced.

25 Q. Do your e-mails generally start in the

1 NICOLE DEXTER

2 middle of the page, without a heading, when you
3 print them out?

4 A. I am not sure why the format of this --
5 I didn't print this out. I just forwarded the
6 e-mail right over to my attorney.

7 Q. Was there anything redacted?

8 A. I don't believe so.

9 Q. Which attorney did you forward it to?

10 A. Ann Gates.

11 Q. Would you look at page 2.

12 A. Yes.

13 Q. Do you see at the bottom it looks like
14 there's an e-mail with no closing? Is anything
15 deleted?

16 A. There is a closing. It says right
17 here, "B."

18 Q. And that's it?

19 A. Yeah.

20 Q. And then it goes right to the Laura --
21 the Laura Bell letter?

22 A. Yes. He says, "I have pasted at end,"
23 in parenthesis on page 2. It says he's pasted the
24 letter in. So he signs it "B," and then he pasted
25 the letter in.

1 NICOLE DEXTER

2 MS. PROGOFF: Do you know whether
3 anything has been redacted from these
4 documents?

5 MR. REISER: I don't, no.

6 I mean, personally, you know, I came on
7 like two weeks ago, so, honestly, I have no
8 idea. I mean, I would trust our counsel would
9 never do anything like that.

10 And just looking at this, you know,
11 you've got the same closing here, "B," Billy
12 Pyatt.

13 MS. PROGOFF: Well, we would like some
14 confirmation that the absence of a heading is
15 not deleting --

16 MR. REISER: I am going to guess it's
17 because it was forwarded to Ian, so he cut out
18 the forward part, but I can confirm it.

19 MS. PROGOFF: Can you confirm it?

20 MR. REISER: Yeah, of course. Yeah, of
21 course.

22 Yeah. I think if there had been a
23 redaction, there would be a redaction log. We
24 would have made the statement that there is a
25 redaction. I would. I would presume. He is a

1 NICOLE DEXTER

2 good attorney, good man.

3 MS. PROGOFF: Well, if you can do that,
4 that would be helpful.

5 BY MS. PROGOFF:

6 Q. Would you look at the bottom of the
7 second page?

8 A. Uh-huh.

9 Q. Do you see on Friday, June 27th, Billy
10 Pyatt wrote, "Hi, Nicole. I just drafted you a
11 letter that I've owed you for over two weeks."

12 A. Uh-huh.

13 Q. Does that help you in place -- in
14 placing the timing of when you spoke with Mr. Pyatt
15 about this?

16 A. Yeah. It must have been about two
17 weeks before then.

18 Q. And was there anything going on that
19 prompted that discussion?

20 A. Like why are we together having that
21 discussion?

22 Q. Well, what -- what -- why did the topic
23 come up at that time?

24 A. We were at a North Carolina
25 Guild-sponsored event, and Billy and John pulled me

1 NICOLE DEXTER

2 aside to talk about it. I assume they heard about
3 it from Joe.

4 Q. Are you talking about -- did you talk
5 to Joe about it around the same time, then?

6 A. Possibly. But Joe knew about it before
7 then, because he knew about it when the Opposition
8 came about. So he knew about it probably in
9 April-ish of 2014.

10 Q. Well, did you have more than one
11 discussion with Joe about it?

12 A. Yeah, I've discussed things with Joe.

13 Q. Well, I am not asking about discussions
14 of things. I'm asking about discussions about this
15 Opposition.

16 A. So I've told you what we talked about
17 so far, which is about the Opposition being filed
18 and being served and then the Notice of Deposition.

19 Q. So you think you've had two discussions
20 with Joe about the Opposition, back when it was
21 filed and when you got the Deposition Notice, or
22 have there been other ones?

23 A. Yeah, I haven't given him any more
24 information than these two conversations. I can't
25 recall really any specific conversations we've had

1 NICOLE DEXTER

2 in regard to it.

3 Q. Do you know somebody named Rick
4 Jackson?

5 A. Yes.

6 Q. Who is he?

7 A. He is an attorney for the ABA, I think.

8 Q. Have you been -- have you had
9 discussions with him about this matter?

10 A. Yes. We were advised to consult with
11 him.

12 Q. Who advised you to consult with him?

13 A. I believe Joe.

14 Q. And was there a -- were you considering
15 having Mr. Jackson represent you?

16 A. I think we were at one point
17 considering that. I don't really remember though.
18 I know we consulted him for his opinion in the
19 matter.

20 Q. Did you retain him for any purpose?

21 A. No. I don't think so.

22 Q. And did he provide you with any advice?

23 A. Yeah. He felt that there was no
24 likelihood for confusion.

25 Q. Is he a trademark lawyer?

1 NICOLE DEXTER

2 A. I don't know.

3 MR. REISER: I can't help you there
4 either. I don't know.

5 MS. PROGOFF: Would you mark as the
6 next exhibit a one-page document with two
7 e-mails on it.

8 (THEREUPON, Exhibit 22 was marked for
9 identification).

10 BY MS. PROGOFF:

11 Q. Would you look at what's been marked as
12 Exhibit 22? Do you recognize this?

13 A. Yes.

14 Q. And do you see that these are two
15 copies of the same e-mail?

16 A. Yes.

17 Q. Why are there two on the same page as
18 that?

19 A. I'm not sure.

20 Q. Is that how those e-mails appear in
21 your computer system?

22 A. I'm not sure.

23 Q. Didn't you do the collection in
24 response to the document request?

25 A. I did.

1 NICOLE DEXTER

2 Q. And did you change anything in
3 collecting documents?

4 A. No.

5 Q. Were you given any search terms so that
6 you could collect electronic documents, like e-mails
7 and other records?

8 A. I don't recall any specific terms.

9 Q. Did you work with your lawyers in
10 collecting the documents, or did you do it by
11 yourself?

12 A. He gave me instructions on what to look
13 for.

14 Q. But you haven't conducted any searches
15 of your computer system?

16 A. Yes.

17 Q. You have?

18 A. Uh-huh.

19 Q. And what terms did you search?

20 A. I can't remember everything I searched.
21 I know I searched Bell's, because that would have
22 brought up anything we talked about.

23 I can't remember any key words that I
24 looked up other than that.

25 MS. PROGOF: We request that the

1 NICOLE DEXTER

2 search terms that were used be disclosed and
3 provided to us.

4 MR. REISER: Did you guys request that
5 originally?

6 MS. PROGOFF: No. I'm requesting it
7 now because this document production clearly
8 has things that are missing.

9 MR. REISER: Well, the document
10 production is extremely vague and overly broad.
11 And, I mean, I looked at it yesterday, and I
12 was like, I don't -- there's no guidance
13 whatsoever. Because when I write an
14 interrogatory and I want people to search their
15 e-mail, I say, "Search these specific e-mails
16 for these specific terms," and that provides
17 actual guidance.

18 So we're at the end of the discovery
19 period here, and unless we can have a
20 conference about this and come up with new
21 terms, we could provide metrics, because I
22 think maybe you would be entitled to what we
23 did do to look for e-mails. I don't mind doing
24 that.

25 MS. PROGOFF: That's what I'm asking.

1 NICOLE DEXTER

2 MR. REISER: But additional discovery
3 right now --

4 MS. PROGOFF: No. I'm not asking for
5 additional discovery right now.

6 MR. REISER: I will consult with
7 co-counsel about that.

8 MS. PROGOFF: But I want to know what
9 was searched.

10 MR. REISER: I will consult with
11 co-counsel about that.

12 MS. PROGOFF: And I also want your
13 confirmation that everything that was
14 responsive to these discovery requests has been
15 produced.

16 What we got was a confirmation that the
17 client confirmed that everything that was
18 called for was produced, and that's not what we
19 asked for.

20 MR. REISER: Well, it's --

21 MS. PROGOFF: It's not the client's
22 responsibility to do the search engines. It's
23 the lawyer's responsibility.

24 MR. REISER: So you fly to Kalamazoo,
25 and you search their e-mail systems for Bell's

1 NICOLE DEXTER

2 as we did the same thing?

3 MS. PROGOFF: No. Or at least provide
4 them with some guidance. It looks like she
5 just went in and picked and chose what she
6 wanted.

7 MR. REISER: Well, you guys didn't
8 provide any guidance. It's your request. You
9 have to provide the guidance here.

10 MS. PROGOFF: We don't have --

11 MR. REISER: Otherwise we have the
12 objection of vagueness. It's overly broad.
13 It's extremely overly burdensome. They can't
14 provide every e-mail ever. They can't read
15 your mind of what you want. You have to
16 provide that guidance.

17 MS. PROGOFF: I think the requests are
18 very clear.

19 MR. REISER: This is pretty late for
20 you to be complaining about the responses
21 now --

22 MS. PROGOFF: We just got them last
23 week.

24 MR. REISER: -- when you didn't provide
25 any guidance.

1 NICOLE DEXTER

2 MS. PROGOFF: We just got them late
3 last week.

4 MR. REISER: These responses as well,
5 the e-mails?

6 MS. FRENCH: These e-mails just came
7 in.

8 MR. REISER: These e-mails are part of
9 the supplementals?

10 MS. FRENCH: These e-mails came in as
11 the supplementals in response to our letters of
12 deficiency.

13 MR. REISER: Okay. All right. I
14 promise you I will talk with co-counsel about
15 whether we can get a better explanation of
16 it --

17 MS. FRENCH: Thank you.

18 MR. REISER: -- but -- I mean, honestly
19 I -- you know, coming into this two weeks ago
20 and looking at the request, they're extremely
21 vague. It's very difficult to come up with any
22 way to actually look at them.

23 And I don't know what -- the extent of
24 your discovery conference with Ian, but those
25 are the questions I would have asked you guys.

1 NICOLE DEXTER

2 You know, you need to restate your
3 interrogatories --

4 MS. FRENCH: All right. Understood.

5 MR. REISER: -- or your request for
6 documents.

7 MS. FRENCH: Sure.

8 MS. PROGOFF: All right. Will you mark
9 as the next exhibit a single e-mail dated
10 June 27th, 2014, from Billy Pyatt to I'm not
11 sure who.

12 (THEREUPON, Exhibit 23 was marked for
13 identification).

14 THE COURT REPORTER: Exhibit 23.

15 BY MS. PROGOFF:

16 Q. Can you look at Exhibit 23, please. Do
17 you recognize that document?

18 A. I do.

19 Q. What is it?

20 A. An e-mail from Billy with a link to a
21 different trademark dispute.

22 Q. Who was Billy sending the e-mail to?

23 A. To us, Innovation Brewing.

24 Q. Is there some reason why the addressee
25 is deleted from this?

1 NICOLE DEXTER

2 A. No. I'm not sure.

3 Q. Is there anything else that was deleted
4 from it?

5 A. Again, I just forwarded the e-mail. I
6 don't know how the addressee got lost in it.

7 Q. Was there any response to this e-mail?

8 A. I don't believe so.

9 MS. PROGOTT: Let's take a break. This
10 might be a good time for one.

11 MR. REISER: Okay.

12 (Recess in Proceedings).

13 (THEREUPON, the deposition of NICOLE
14 DEXTER was adjourned at 4:11 p.m.)

15

16

17

18

19

20

21 _____
NICOLE DEXTER

22 Subscribed and sworn to before me

23 this _____ day of _____, 2015.

24 _____

25 NOTARY PUBLIC

1 NICOLE DEXTER

2 MR. REISER: Sorry.

3 BY MS. PROGOFF:

4 Q. Do you have the company name or any
5 other markings on your booth?

6 A. Yes. We have T-shirts sitting on the
7 booth usually that have our name. We usually bring
8 a little dry erase board that we write our name and
9 what beers we have on and set that up.

10 Q. Do you have to register to participate
11 in any of these festivals?

12 A. Register. I'm not sure. I don't
13 recall.

14 Q. Well, can you just show up unannounced
15 and set up a booth and hand out beer?

16 A. No, there's communications. I'm just
17 not sure if it's an official registration or phone
18 call. I don't really remember.

19 Q. Is it different for different
20 festivals?

21 A. I think so. I think so.

22 Q. Are there any you have to register for?

23 A. I don't know, off the top of my head.

24 Q. Do you need any kind of permit or
25 license to participate in a beer festival and hand

1 NICOLE DEXTER

2 out beer?

3 A. Yes.

4 Q. And do you have a license?

5 A. Yes.

6 Q. What kind of license do you have?

7 A. It's a special events license.

8 Q. It is issued by whom?

9 A. The North Carolina State.

10 Q. Do you have any license from the TBB to
11 participate in festivals?

12 A. I'm not sure.

13 Q. What about festivals that are outside
14 North Carolina, like the one you mentioned in South
15 Carolina that you attended? Did you need any kind
16 of permit or license to participate in that one?

17 A. I don't believe so.

18 Q. Let's look at the answer to
19 Interrogatory 30, which is on page 18.

20 Which of the entries listed on that
21 table are based on information that you provided in
22 preparing these interrogatory answers?

23 A. I've looked at all of these on the
24 registration.

25 Q. Is all of the information that's listed

1 NICOLE DEXTER

2 A. It's on the side of their bus, so...

3 Q. Anything else?

4 A. No.

5 Q. And do you know whether people
6 recognize that term and associate it with them?

7 A. I do not know.

8 Q. Would you look at the response to
9 Interrogatory 33, please.

10 A. Yes.

11 Q. Okay. Did you provide the information
12 that appears in that response?

13 A. Yes.

14 Q. Which files were searched?

15 A. All of our files that we've got.

16 Q. Well, can you tell me specifically
17 which files were searched?

18 A. I don't know which ones specifically.

19 Q. Did you do the searching?

20 A. I did.

21 Q. Did you -- were anybody's files
22 searched other than yours and Mr. Owen's?

23 A. I don't believe so.

24 Q. Are there general files that the
25 company has?

1 NICOLE DEXTER

2 A. The company files are our files. We're
3 the member managers of the company.

4 Q. Are you telling me, then, that every
5 file that the company owns is your file or
6 Mr. Owen's file or both?

7 A. Yes.

8 Q. And all those files were searched in
9 response to the document requests that were served
10 in this proceeding?

11 A. I don't know.

12 Q. Well, who did the searching?

13 A. Myself.

14 Q. And you don't know if you searched all
15 the files?

16 A. I don't recall exactly what I searched.

17 Q. Well, what did you do when you were
18 told to go look for documents?

19 A. I looked through any file I thought
20 would have information on what I was searching for.

21 Q. Were there categories of files that you
22 searched?

23 A. Yes, our files are categorized.

24 Q. Well, which categories did you search?

25 A. I believe I searched through all of

1 NICOLE DEXTER

2 them.

3 Q. You searched through all of the
4 company's files?

5 A. All the categories were hit.

6 Q. Which categories?

7 A. I don't recall which ones exactly.

8 Q. Sitting here today, you can't tell me
9 one category of file that you looked at?

10 A. No, I can't recall any specifically.

11 Q. All right. What categories of files
12 does the company have?

13 A. I'm drawing a blank on specific names
14 of our category files.

15 Q. You can't think of one?

16 A. We have -- we have an accounting file.

17 Q. Okay. Did you look at the accounting
18 file to collect documents to respond to this -- to
19 the document request in this proceeding?

20 A. I don't recall.

21 Q. Okay. What other categories of files
22 do you have?

23 A. I am trying to envision my computer
24 screen. I don't know.

25 Q. Do you have any paper files?

1 NICOLE DEXTER

2 But the interrogatories go on to No. 40. So we
3 don't know who provided the information for 36
4 through 40.

5 Do you have any understanding as to why
6 or any idea as to why that information wasn't
7 provided?

8 A. I don't know.

9 MR. REISER: For the record, since
10 he'll be supplementing this to clarify what he
11 produced, we'll also have this addressed as
12 well.

13 MS. PROGOFF: Thank you.

14 MS. FRENCH: Thank you.

15 BY MS. PROGOFF:

16 Q. Would you look at the answer to 38
17 again, please. You see it refers to your consulting
18 with friends, family, and acquaintances?

19 A. Uh-huh.

20 Q. Which friends did you consult with?

21 A. Oh. I don't know which friends I've
22 talked to this about.

23 Q. You have no names at all for that?

24 A. (Nods no).

25 Q. Not one?

1 NICOLE DEXTER

2 A. (Nods head).

3 Q. What about family?

4 A. I'd say my brother, my mom.

5 Q. What's your brother's name?

6 A. Eric Dexter.

7 Q. Do you have an address for him?

8 A. I do not. He lives in Switzerland.

9 Q. And your mom, what's her name?

10 A. Zoe.

11 Q. Pardon?

12 A. Zoe, Z-O-E.

13 Q. Dexter?

14 A. Yep.

15 Q. And where does she live?

16 A. She lives in South Carolina.

17 Q. Do you have an address?

18 A. I don't know her address.

19 Q. Any other family?

20 A. Not that I can think of.

21 Q. And what about acquaintances?

22 A. I don't know.

23 Q. You can't think -- you can't provide us
24 with one name of an acquaintance that you discussed
25 this matter with?

1 NICOLE DEXTER

2 A. Yes.

3 Q. Okay. And does that -- does that
4 insinuate -- let me phrase this a different way.
5 Does -- does that mean that you're
6 going to sell beer to a larger region?

7 A. Yes.

8 Q. Okay. And what do you define as your
9 region?

10 A. Mostly the Southeast. Southeastern
11 states: Georgia, South Carolina, Florida, North
12 Carolina, Tennessee.

13 Q. What is your incentive to sell to
14 states like that?

15 A. Well, we're geographically really close
16 to a few other states, a lot closer than we are to a
17 lot of North Carolina, so that's a big incentive.

18 Q. Have you already begun promoting your
19 beer in any of those states?

20 A. Yes.

21 Q. Can you give me an example?

22 A. The South Carolina beer festival. We
23 did a lot of promotion for our brand in South
24 Carolina.

25 Q. Okay. When do you plan to begin

1 NICOLE DEXTER

2 selling outside of the state of North Carolina?

3 A. Hopefully soon. Maybe the next six
4 months or so.

5 Q. What is the factor that would allow you
6 to be able to do that?

7 A. We'd have to increase production a
8 little bit.

9 Q. Okay. Does that require you to buy new
10 equipment?

11 A. Yes.

12 Q. Do you guys currently have the funds to
13 buy that equipment?

14 A. I'm not sure.

15 Q. Okay. With regard to your brewery, do
16 you guys offer 22 beers at all times?

17 A. Yes.

18 Q. Do you guys release a new beer at least
19 every week?

20 A. Yeah, I think about that.

21 Q. Do you think that that's different from
22 the norm of most breweries?

23 A. Definitely.

24 Q. Does that make you stand out, do you
25 think?

1 NICOLE DEXTER

2 A. Yeah.

3 Q. Do you offer standard styles like --
4 for instance, let me give you a good example.
5 Hi-Wire Brewing here in town has four core beers.
6 They have a pale, they have an IPA, they have a
7 brown, and then they have a lager.

8 A. Uh-huh.

9 Q. Do you offer those types of normal
10 styles?

11 A. We do. We don't offer lagers, but we
12 offer the kind of standard beer styles as well.

13 Q. Okay. But do you have more creative
14 takes on those beers?

15 A. Yes.

16 Q. And is it because you use a lot of
17 adjuncts?

18 A. Yes.

19 Q. All right. Have you sold beer since
20 your opening in kegs with keg collars displaying the
21 Innovation name?

22 A. Yes.

23 Q. And have you guys sold beer since your
24 opening to persons traveling from out of state?

25 A. Yes.

1 NICOLE DEXTER

2 Q. And do you use keg bands now to further
3 mark your beer?

4 A. Yes.

5 Q. Do those keg bands offer promotional
6 value or are they just for helping people return
7 your kegs?

8 A. They also offer promotional value.

9 Q. Can you explain a little bit?

10 A. Yeah. People see our brand name on
11 them. And if they haven't heard about us, it
12 probably would incline them to look us up maybe.

13 Q. Okay. Let's talk about other things
14 that may offer promotional value.

15 Do third-party gear websites offer
16 promotional value?

17 A. Yeah.

18 Q. Do you guys list your products on sites
19 like UnTapped?

20 A. Yes.

21 Q. Is your product listed on sites like
22 RateBeer?

23 A. I'm not sure.

24 Q. How about BeerAdvocate?

25 A. I'm not sure about that either.

1 NICOLE DEXTER

2 Q. Okay. If they were, would you consider
3 that to have promotional value?

4 A. Yes.

5 Q. What about newspaper articles or blog
6 write-ups? Do those offer promotional value to you?

7 A. Yes.

8 Q. And do beer events offer a promotional
9 value?

10 A. Yes.

11 Q. All right. Last set here.

12 In talking to Tony Kiss -- well, let me
13 ask you this just really quick to get it on the
14 record.

15 Tony Kiss was the first time you spoke
16 publicly about this opposition.

17 A. Yes.

18 Q. Okay. I didn't ask that as a question
19 I just realized.

20 Is that okay? You want me to say it
21 again?

22 Was this first time you spoke publicly
23 about this case -- when was the first time you spoke
24 publicly about this case.

25 A. When we spoke with Tony.

1 NICOLE DEXTER

2 BY MS. PROGOFF:

3 Q. This is Exhibit 24. Take a look at the
4 defenses.

5 A. Okay.

6 Q. Did you discuss any of those with your
7 attorney before that document was filed or served?

8 MS. PROGOFF: She's got it.

9 MR. REISER: Page 3. I am just trying
10 to get her there real quick.

11 (Off-the-Record Discussion).

12 THE WITNESS: Yes.

13 BY MS. PROGOFF:

14 Q. And you approved that document before
15 it was filed?

16 A. Yes.

17 Q. Now, you testified a few minutes ago
18 that you made statements to the press that resulted
19 in some publicity about Bell's and also about your
20 own company?

21 A. Yes.

22 Q. And once that publicity and the
23 negative comments from the public came in, you
24 continued to comment publicly about this matter,
25 didn't you?

1 NICOLE DEXTER

2 A. Yes.

3 Q. Did you receive any negative comments
4 that impacted the safety of you or Mr. Owen or any
5 of your employees?

6 A. No.

7 Q. Have you received any comments that
8 affected the safety of any of your customers?

9 MR. REISER: I object to the form of
10 the question, but you can answer.

11 THE WITNESS: No.

12 MR. REISER: Calls for speculation.
13 Go ahead.

14 THE WITNESS: Oh. Not that I know of.

15 BY MS. PROGOFF:

16 Q. Are you aware that there have been
17 threats to Bell's employees as a result of some of
18 your comments?

19 A. No.

20 MS. PROGOFF: I have nothing further.

21 THE WITNESS: Okay.

22 (Off-the-Record Discussion).

23 BY MS. PROGOFF:

24 Q. What was your intent in talking to the
25 press and putting your statements on social media

1 NICOLE DEXTER

2 about this case?

3 A. We just felt like it was kind of an
4 important story to get out for the industry.

5 Q. Why?

6 A. Because we felt like there was no
7 likelihood of confusion.

8 Q. Why was it important to the industry?

9 A. Because I'm not sure how often this
10 happens in the industry, so I felt it was important
11 to tell our story.

12 Q. Is this affecting a company other than
13 you and Bell's?

14 A. I don't know.

15 MS. PROGOFF: I have no further
16 questions.

17 (THEREUPON, the deposition of NICOLE
18 DEXTER was concluded at 11:24 a.m.)
19
20

NICOLE DEXTER

21 DATED this ____ day of _____, 20 ,
22 at _____, .
23
24
25

EXHIBIT A3

1 CHARLES OWEN

2 garden, whatever's fresh, and throw it in the beer.

3 Q. And is there anything unusual that
4 you've put in the beer from your garden?

5 A. No.

6 Q. No?

7 A. We did basil from our garden and mint,
8 but those have all been done before.

9 To a lot of people -- a lot of the
10 consumers, though, they're used to, like, you know,
11 I go to a brewery, they have six beers. We have a
12 wide variety. So it is a unique experience to a lot
13 of people, because a lot of people maybe haven't
14 experienced this. But a lot of people are playing
15 around, all small breweries. Well, not all of them,
16 but a lot of small breweries do play around with
17 ingredients.

18 Q. Have you been involved in putting
19 material up on your company's website or designing
20 the website?

21 A. No. Well, we probably provide
22 pictures, but -- and probably I think Nicole has
23 written some stuff because she's a much better
24 writer than me. I have a more technical mind.

25 But it is our friend Watson that does

CHARLES OWEN

the website stuff.

Q. What's Watson's name?

A. His last name is Watson, first name Michael.

Q. How often is the website updated?

A. Few and far between, unfortunately. I couldn't tell you. Maybe every two or three months.

Q. Who provides the designs and the content of your website?

A. What do you mean by "content"?

Q. Well, the material that is up there, you know, the pictures, the artwork, the text.

A. A lot of the art, I believe --

Q. The ideas for the text.

A. Yeah, I believe he has done a lot of the artwork. And if he wants to -- you know, like beers or whatever, we'll tell him what that is.

Q. Do you tell him what you want the website to say?

A. I haven't.

Q. No?

A. Uh-uh.

Q. Well, you were here yesterday when Nicole testified about how the website is done.

CHARLES OWEN

A. Yeah.

Q. And did you hear her testify that you were primarily responsible for the website?

A. No. That's web hosting, I believe.

Q. You do the web hosting?

A. No. But I just did set up the Innovation Brewing without the hyphen in it.

Q. And when did that happen?

A. I don't know. A month or so ago.

Q. So is that website active now?

A. No. Right now, it just directs people to the hyphen brewing.

Q. Are you going to keep the hyphen brewing website as your primary website?

A. That's a good question. I don't know. We have to talk to the web guy and decide -- because there's a lot of -- probably, you know, in Google search, like, however it rates it, that's probably higher up, and I don't know if we'd want to change that or not. I don't know.

Q. Who's your web guy?

A. Michael.

Q. Michael?

A. Yeah.

CHARLES OWEN

Q. And is he -- does he act as a consultant on all things related to your website?

A. I don't know.

Q. Well, if you have questions about your website, what do you do?

A. Oh, yeah, I guess so.

Q. Does he provide you with information about searching strategies?

A. Not really discussed that with him.

Q. Well, you just mentioned that the hyphenated version of the domain name is likely to get more hits on Google --

A. Yeah.

Q. -- than the unhyphenated ones.

A. It is.

Q. Well, where did you get that information from?

A. Oh. That doesn't go on the record.

Q. You have to answer.

A. I know.

I don't know. I have a lot of nerdy friends.

Q. Okay. Would you take a look at what was previously marked as Exhibit 6. Do you

CHARLES OWEN

recognize that?

A. Yes.

Q. What is it?

A. That is our logo -- or a couple of our logos.

Q. A couple of your -- okay.

A. Yeah.

Q. Were you responsible for designing either of those logos?

A. This first one, I drew it on a napkin once.

Q. Okay. Let the record show that the witness just pointed to the bottom of the 2 logos --

A. Ah.

Q. -- appearing on that page.

A. Uh-huh.

Q. Did you have anything to do with the design of the top one?

A. I did not.

MR. REISER: Could I pause for a quick second? Did we introduce this again as a new exhibit number?

MS. PROGOFF: No.

MR. REISER: We are just referring back

CHARLES OWEN

to --

MS. FRENCH: We are referring back to old numbers.

MR. REISER: Cool. I just wanted to make sure.

MS. PROGOFF: No. We don't need extra exhibits.

MR. REISER: No, we definitely don't need that.

(Off-the-Record Discussion).

(THEREUPON, the above-referred to portion of the Record was read back by the Court Reporter).

BY MS. PROGOFF:

Q. Did you have anything to do with the modification of the logo that appears on the top of Exhibit 6?

A. No.

Q. Would you take a look, please, at what was previously marked as Exhibit 7.

A. Sure.

Q. And I direct your attention to the second page of that exhibit.

A. Okay.

CHARLES OWEN

Q. Are you familiar with what appears as Exhibit 7?

A. Yes, I am.

Q. All right. Do you see that there's a logo at the top of page 2 of that exhibit?

A. Yes.

Q. And that's similar to the logo that appears at the top of page 6 -- of Exhibit 6; is that right?

A. It is, yes.

Q. But there are some changes there.

A. There are.

Q. How did those changes come about?

A. I believe the designer just made a different logo.

Q. Who's the designer?

A. Changed the middle.

I can't look at Nicole, but whoever she said the other day. Yesterday.

Q. Did you request that the changes be made?

A. No.

Q. Did you have anything to do with the changes being made?

1 CHARLES OWEN

2 A. No. I think artistic freedom. We
3 didn't prohibit him from making any changes.

4 Q. Well, were you involved in giving him
5 any instructions to prepare that brochure that is
6 marked as Exhibit 7?

7 A. I mean, I don't think so.

8 Q. Were you involved in the preparation of
9 any promotional materials or labels or other kinds
10 of markings that have been used in your company's
11 business?

12 A. Well, like I said, I was the one who
13 first sketched just the simple gear in the pint
14 glass.

15 Q. Did -- when you sketched that logo --

16 A. Yeah.

17 Q. -- how did it get from a design on a
18 napkin to your company's logo? Can you explain
19 that?

20 A. Yeah. I -- I believe that one was done
21 by -- initially I sketched it and then -- that one I
22 believe I gave to my friend Jamie Wills, who then
23 sent me the JPEG or whatever file it was that we had
24 for it. I forget the format.

25 Q. Did you or anybody else search to make

1 CHARLES OWEN

2 sure that that logo was available for your use?

3 A. No.

4 Q. Did anybody look at any other
5 companies' logos to make sure that it was available?
6 Any kinds of investigations or inquiries or anything
7 like that?

8 A. No.

9 Q. What about the logo that appears on the
10 top of Exhibit 6 and also the top of the second page
11 of Exhibit 7? Did anybody search either of those
12 two versions of the logo?

13 A. No.

14 Q. Or conduct any investigations to make
15 sure that that logo was available?

16 A. Not that I know of.

17 Q. Have you been involved in obtaining any
18 licenses or approvals from the TTB or from North
19 Carolina for any of your products?

20 A. I don't know.

21 Q. Can you explain your answer?

22 A. Yes. I'm not sure if it was me or
23 Nicole who applied for them. I'm sure that I helped
24 in some way, but I don't remember how.

25 Q. Well, what kinds of licenses does your

1 CHARLES OWEN

2 company have?

3 A. I'm not sure all of them, but I will
4 tell you the ones I remember.

5 We have a retail malt beverage permit
6 from the ABC.

7 Q. ABC meaning North Carolina?

8 A. North Carolina ABC.

9 We have a malt beverage manufacturing
10 permit. We have a special event permit. These are
11 all ABC. We have a unfortified wine permit. We
12 have a -- I believe -- I'm not sure on this. I -- I
13 think it's the Jackson County business operating
14 permit. We have a brewer's bond --

15 Q. Brewer's bond?

16 A. -- through the TTB.

17 Q. Brewer's bond --

18 A. Yeah.

19 Q. -- did you say?

20 A. Yeah. Uh-huh. And that is all I can
21 think of or remember now.

22 Q. Okay.

23 A. And I believe those were all sent to
24 you or will be sent to you today.

25 MR. REISER: The bond wasn't. But

1 CHARLES OWEN

2 we'll send it because that's easy. It's just a
3 one-pager.

4 MS. PROGOFF: Okay. What was the first
5 one?

6 MS. FRENCH: It was a retail malt
7 beverage.

8 THE WITNESS: Uh-huh.

9 MS. FRENCH: Malt brewer, I think.

10 THE WITNESS: There are five ABC ones,
11 and I know I missed one in there. But it will
12 be to you today, I guess.

13 Let's make sure I got it right.

14 MS. FRENCH: You had listed as ABC
15 ones, the retail?

16 THE WITNESS: Yeah.

17 MS. FRENCH: Manufacturer?

18 THE WITNESS: Yeah.

19 MS. FRENCH: Special event?

20 THE WITNESS: Yeah.

21 MS. FRENCH: Unfortified wine?

22 THE WITNESS: Yes.

23 MR. REISER: Wholesaler is the last
24 one.

25 MS. FRENCH: Wholesalers.

1 CHARLES OWEN

2 THE WITNESS: Oh. Wholesale, yeah.

3 Thanks.

4 MR. REISER: Uh-huh. Sometimes it pays
5 to own a brewery.

6 THE WITNESS: Yeah.

7 BY MS. PROGOFF:

8 Q. Okay. What's the retail malt beverage
9 license for?

10 A. Selling beer out of our establishment.

11 Q. And this is unbottled beer, things from
12 kegs that you serve to customers at your brewpub?

13 A. It could be bottles, I believe. But
14 don't quote me on it. Well, yeah, bottles. Yeah,
15 it can be bottles. And it doesn't --

16 MR. REISER: Sorry. It's too funny to
17 hear people say during depositions, "Don't
18 quote me on this."

19 (Off-the-Record Discussion).

20 BY MS. PROGOFF:

21 Q. Okay. So that's the license --

22 A. Yes.

23 Q. -- that allows you to serve beer at
24 your premises; is that right?

25 A. Yes, serve and sell.

CHARLES OWEN

Q. Okay.

A. And it doesn't have to be our beer. It can be anybody's beer.

Q. Right. And then beverage manufacturing?

A. That allows us to make beer.

Q. Okay. Does it cover anything other than the beer?

A. I think it's a malt beverage manufacturing permit. Uh-huh.

Q. Okay.

A. So anything malty.

Q. The special event license, what does that cover?

A. That allows us to do events off premise.

Q. What type?

A. We can sell beer off premise with that.

Q. Is it -- allow you to sell only at certain types of events, or could you just set up a roadside stand and sell?

A. As long -- as long as it is in an acceptable place that you could sell alcohol and we're allowed by the owner of the property, we can

1 CHARLES OWEN

2 sell beer anywhere.

3 Q. So if I owned a house three blocks from
4 your premises and I said, "It's okay to set up a
5 stand on my front lawn," you could do that?

6 A. I would have to check with the North
7 Carolina ABC Commission, but probably not.

8 Q. Why not?

9 A. Because it's private property and it's
10 not a commercial space. But -- oh, no. Actually,
11 you might be able to sell. I don't know. I would
12 check into it. Yeah.

13 Q. Okay. But it doesn't restrict you to
14 things like beer festivals?

15 A. No. No.

16 Q. Okay. But is that the permit that
17 allows you to participate in beer festivals?

18 A. Yeah.

19 Q. Now, your unfortified wine permit.

20 A. Yeah. We serve wine by the glass at
21 our establishment as well.

22 Q. And where does the wine come from?

23 A. A distributor.

24 Q. So that's made by a third party; is
25 that right?

1 CHARLES OWEN

2 A. Yes. Yes.

3 Q. Okay. You don't make wine?

4 A. No, we do not make wine.

5 Q. Okay. And then the Jackson County
6 operating license, what's that?

7 A. That's just the privilege to do
8 business in Jackson County.

9 Q. Okay. Do you have any TTB licenses or
10 permits for your specific products?

11 A. I do not believe so.

12 Q. What about label approvals from the
13 TTB? Do you have any of those?

14 A. I don't believe so.

15 Q. Have you applied for either of those
16 two things?

17 A. I don't think so.

18 Q. Now, the brewer's bond, that's a TTB
19 license or permit?

20 A. I don't know. Can I refer to Doug
21 to -- because he might know? Or not?

22 Q. Well, I'm trying to get your knowledge.

23 A. Okay. Well, I don't know.

24 Q. But do you know what that covers? What
25 does it allow you to do?

1 CHARLES OWEN

2 A. I have no idea.

3 Q. How long have you had it?

4 A. Before we opened.

5 (Off-the-Record Discussion).

6 MS. PROGOFF: Okay. Why don't you tell
7 us what these --

8 MR. REISER: Yeah, the brewer's bond is
9 just a -- you are required by law to post a
10 bond to the TTB to cover taxes, your tax
11 liability. And traditionally the bond was
12 either a minimum of a thousand dollars or what
13 you would pay in a quarter.

14 So most start-up brewers have a
15 thousand-dollar bond, and I think that's what
16 they have as well.

17 THE WITNESS: It is.

18 MR. REISER: But I am including that in
19 the stuff I am turning over to you guys today.

20 It's not a license or permit. It's
21 just an obligation to have to get your permit.

22 MS. PROGOFF: Okay. Thank you.

23 Is that the only TTB --

24 MR. REISER: The only permit you need
25 for the TTB is the brewer's notice --

1 CHARLES OWEN

2 THE WITNESS: I have that.

3 MR. REISER: -- which you guys have --
4 I mean, which is being sent to you guys.

5 THE WITNESS: You need that before you
6 get your ABC stuff and your state stuff.

7 MR. REISER: There is a single-page
8 thing, too, that retailers have to get that if
9 you are selling your beer as well, you would
10 get it; but your brewer's notice includes it.
11 So it's -- you can only see the Brewer's
12 notice. It's really the only thing that a
13 micro brewery has to have.

14 MS. PROGOFF: Okay. Thank you.

15 MR. REISER: Uh-huh.

16 BY MS. PROGOFF:

17 Q. Would you take a look at what was
18 marked yesterday as Exhibit 10. And I direct your
19 attention to the last page of that exhibit.

20 A. Okay. Oh, yeah. Look at that fancy
21 handiwork.

22 Q. Is that something that you designed?

23 A. I did. With the help of Lowe's.

24 Q. With the help of? Lowe's?

25 A. Lowe's department store. I went in

1 CHARLES OWEN

2 A. Well, I can't remember if he just was
3 questioning on us about how we were feeling about it
4 all, or if he asked questions about the dispute,
5 because it was probably -- like he probably knew the
6 facts. So I don't remember what the questions were.

7 Q. Did he -- did you discuss whether the
8 dispute has any impact on your business?

9 A. I don't think so.

10 Q. Did you discuss that with Mr. Kiss?

11 A. No.

12 Q. Did you discuss with either of them
13 whether the dispute has any impact on Bell's
14 business?

15 A. No.

16 Q. No, you didn't -- did not discuss that?

17 A. No, we did not discuss that.

18 Q. The next person you named was Nick
19 Breedlove, I believe.

20 A. Yes.

21 Q. Who is he?

22 A. He is the mayor -- I believe he is the
23 mayor of somewhere. Well, he's the -- works for --
24 as a reporter. For a local newspaper, I believe.

25 Q. Which local newspaper?

1 CHARLES OWEN

2 they sent out approximately -- or they received
3 approximately a hundred and responded to them.

4 THE WITNESS: Like I said, I didn't go
5 through them.

6 MR. REISER: Okay. I will put your
7 request down here and talk to Mr. Gates about
8 it. This is the discovery deadline day, so
9 we'll see how that goes.

10 MS. PROGOFF: Well, I think it's
11 encompassed by existing document requests.

12 MR. REISER: What request would that
13 be? Because I don't remember any that said
14 send every e-mail you ever received in response
15 to a --

16 MS. PROGOFF: Well, there were requests
17 that requested e-mails that related to Bell's,
18 I think. Things that relate to this dispute
19 involve Bell's.

20 MR. REISER: Well, I'll look at them
21 real quick. You're really trying to make us
22 work here.

23 All right. Go ahead and proceed.

24 BY MS. PROGOFF:

25 Q. Did you have any discussions with

1 CHARLES OWEN

2 members of the public, your customers, potential
3 customers, anybody else regarding this dispute once
4 the articles and the publicity started appearing?

5 A. Only if they initiated it. And I tried
6 to get away as soon as possible.

7 Q. And how many people tried to initiate
8 it with you?

9 A. I -- I mean, maybe 20.

10 Q. And these were all people that are
11 local?

12 A. Yeah. At the bar when we're working,
13 or whatever, they would just try to stop us and talk
14 to us.

15 Q. And what kind of things did they say?
16 Or what did they say?

17 A. I don't know any specifics but that
18 they're in support of us.

19 Q. And did you respond to any of them?

20 A. We'd say, "Thank you for your support."
21 And that's about it. But I -- yeah.

22 MS. PROGOTT: Let's take a short break.

23 MR. REISER: Thank God.

24 (Recess in Proceedings).

25 MS. PROGOTT: Okay. Would you mark as